THE CHILD, THE LAW, AND THE STATE:

Being a

SHORT ACCOUNT OF THE PROGRESS OF REFORM OF THE LAWS AFFECTING CHILDREN IN NEW SOUTH WALES, WITH SOME SUGGESTIONS FOR THEIR AMENDMENT AND MORE HUMANE AND EFFECTIVE APPLICATION.

By

THE HON. CHARLES K. MACKELLAR, M.L.C.

PRESIDENT OF THE STATE CHILDREN RELIEF BOARD.

SYDNEY:
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THE HONOURABLE C. K. MACKELLAR.

I HEARTILY commend this publication to all men and women who direct their attention to public affairs, and especially to those who participate in the work of legislation or in movements which lead up to such.

Dr. Mackellar has given long and valuable service to the State of New South Wales in administering that portion of its social legislation directed to the protection and reformation of children. His work has been one of self-sacrifice and of devotion to a good and noble cause. His ability no one questions; his experience has been of the completest character; and he combines with both a love of country, which has induced him to ask for even greater attention to a phase of social reform which means more to a country and its future population than most citizens have perceived. It is because I think that he has done a distinct public service by the compilation of these pages that I have authorised their publication with a view of still further exciting public attention to the value of the legislation already passed, and to the necessity for further reforms along the lines that he indicates.

J. H. CARRUTHERS,
Premier.

5th September, 1907.

Preface.

My object in offering this publication for perusal is to show briefly the extent to which New South Wales has realised the importance of "reformative" rather than "punitive" methods in dealing with the delinquent section of the population, and to indicate the lines, which, in my opinion, administrative and legislative labours should follow in the future, so that the maximum of reform with the minimum of punishment may be the result of their efforts.

Naturally, my particular concern is the preservation and protection of the young life of the community, and the means by which this purpose may best be achieved I have entered into rather fully. To my mind it is a matter for national regret that, years ago, much more effectual legislation should not have been introduced to ensure greater supervision over illegitimacy and the serious disabilities connected with it.

The subject-matter in the second part is concerned specially with the State Children Relief Board—its nature, duties, and purpose. As these are aspects which previously have not received full attention, I have considered them in detail and have shown how important it is, for social reasons, that the Board's practical abilities should have the fullest play, untrammelled by any restrictions of routine or technicality.

There are two aspects of the social question in this State, which deserve very full treatment: the consolidation of the laws relating to children, and the value of the numerous purely private bodies and institutions, which have for their object the performance of social work. The former of these questions I have touched upon, but space has prevented my considering either of them in detail.

One final word in reference to my views as to the functions of the State Children Relief Board. In emphasising the importance that attaches to a recognition of the fact that the administration of such a body must be liberal and unrestrained if it is to fully achieve the purposes for which it was created, I am not making any innovation: I am simply asserting that the principle of administration by properly-constituted honorary Boards, with independent and liberal discretionary powers for the performance of social work, is the principle adopted not only here, but almost universally by the different legislatures. Here, however, it happens that this principle, after being adopted by the State, is likely to be interfered with and practical results lessened merely because of the existence of certain technicalities and ambiguities.

CHARLES K. MACKELLAR.

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The Child, The Law, and The State.

PART I.

The Child, The Law, and The State.

THE British Nation has throughout the civilised world an acknowledged reputation for its philanthropy, and, if the multitude of its benevolent institutions is to be accepted as a criterion, its reputation is deserved. I am, however, not disposed to rest the claim upon that circumstance alone as a safe measure of benevolence, but would rather seek its manifestation in the enactment of humane and just laws for the amelioration of the life-conditions of the lower strata of society, and especially in the care shown for the welfare and guidance of helpless children. And, judged by these standards it must be admitted that the altruistic character of our people is demonstrated. It is doubtful, however, whether we can claim to have been the originators of the great onward movement in that direction, and, in fact, it must be acknowledged that far from always being the leaders in the matter, we have at times been deplorably conservative. The impulse to Social Reform, which has been characteristic of the last century, has not been limited to particular peoples, but has been world-wide. It has been felt with different degrees of intensity in different countries, and philanthropic bodies have all over the civilised world applied themselves to the task of remedying social evils of all kinds; whilst Parliaments have during the last half-century especially given attention to the enactment of laws for the well-being of helpless children. This latter movement had its origin partly because of the development of a genuine altruistic spirit, and, it must be sorrowfully acknow-

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Philanthropic movement a general one.

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School for Girls at Newcastle—afterwards removed to Biloela and then to Parramatta—provided for vagrant and delinquent children. Two or three years later saw the Shaftesbury Reformatory opened for the reception of females.

Difference between a Reformatory and an Industrial School.

Although there is a difference expressed in the Reformatory and Industrial Schools Acts as to the nature of cases treated by each, the distinction between them has generally been a fictitious one. In theory, only actual malefactors could be legally admitted to a Reformatory School upon conviction, while destitute and vagrant children, merely because of such destitution or vagrancy, were supposed to be sent to an Industrial School. In actual practice very little distinction has been preserved. Actual malefactors have been sent alike to an Industrial or to a Reformatory School; and vagrancy, where it has contained and displayed criminal tendencies, has generally (although not always) been treated in a Reformatory. Speaking generally, and with due regard to present conditions, the discipline of a Reformatory School should be stricter than that at an Industrial School, because in the former the fact of criminal delinquency has been proved and must be contended with. The criminal tendencies may be present in cases sent to an Industrial School, but usually they are not so flagrant as in the former instance, and may be met with milder treatment. At the present time, however, in our State Industrial and Reformatory Schools the discipline is practically the same: both Institutions receiving actual delinquents. Cases in which criminal tendencies are not manifest are met by the employment of a different policy—that of boarding-out or its equivalent—release upon probation, or committal to the care of persons named. Of this policy I shall speak in detail presently.

Boarding-out.

The Barrack System continued to be the State policy until 1881, when the late Sir Henry Parkes introduced into the legislature a Bill authorising a new method of dealing with dependent children, which was destined in a short time to entirely supersede the treatment in large institutions. For several years a small committee of

ladies had been carrying-on, by means of private subscriptions, supplemented by small grants in aid from the State, a system of boarding-out orphans in private families; and the success which had attended their efforts induced Sir Henry Parkes to embody its principles in an Act of Parliament, the whole cost of its administration being undertaken by the State. Mrs. Garran, Lady Allen, Lady Windeyer, and Mrs. Jefferis, who had been the active members of the private committee, together with Sir Arthur Renwick, and several others were appointed a board to carry out the Act, and under that system the wards of the State still continue to be provided for.

Philanthropic effort

Formation of Board.

In the year 1881, under the Barrack System, the Roman Catholic Orphan School was providing for 256 children, the Protestant Orphan School for 186, the Girls' Industrial School at Biloela for 130, the Randwick Asylum for 643, the Benevolent Asylum for 156, and the School of Industry for 35—a total of 1,406 children. The new policy was administered by the State Children Relief Board, which had authority to "withdraw children from Reformatory or Industrial Schools, the Benevolent Asylum, every Government asylum for orphaned or destitute children, and any charitable institution that may be wholly or partly supported by grants from the Consolidated Revenue Fund, for the purpose of placing them in homes as boarders or as adopted children or apprentices." This provision as to the adoption of children meant, under the Board's jurisdiction, that a class known as "foundlings," chiefly infants, were provided for independently in private homes instead of, as formerly, becoming inmates of one of the various institutions. In future, private families were selected and paid for the keep of the Board's wards, under 12, at rates varying according to the ages, and the Barrack System, as a State policy, ceased. In the first year of the Board's operations 103 children were dealt with. In the following year 307 children (inclusive of 233 children withdrawn from institutions) were under the Board's jurisdiction. Next

Condition of Barrack Institutions (1881).

S.C.R. Board Powers.

Board's power to withdraw children from Institutions to dispose of the

year the number had increased to 648, the large majority of children being drawn from the institutions, which were being gradually cleared. By 1886 the Protestant Orphan School had been emptied; by 1887, the Roman Catholic Orphan School. The Randwick Asylum had now ceased to be a place recognised by the Government for the maintenance of children, but was operating as a wholly private institution. The Benevolent Asylum ceased to be used for children, except as a Receiving Depôt for them prior to their being boarded out. The institution system continued for the treatment of delinquents and juvenile offenders only. Private philanthropic bodies and certain denominational institutions continued to deal with the children as before, but the State policy no longer allowed of co-operation with them in so far as the treatment of the destitute children of the State was concerned. By 1888 the number of children boarded-out had gradually grown to 1,960, and at the conclusion of the official year 1906 the number was 7,036—inclusive of 3,146 children placed with their own mothers. The Amendment to the State Children Relief Act in 1896 allowed of children under 12 being boarded with their own mothers, if widows or deserted wives—a provision which has been extensively availed of.

Closing of Barrack Institutions.

State Children's Act Amendment Act (1896).

The next measure of social importance was that of the Children's Protection Act of 1890—amended in 1900 and 1902. The amendments introduced in the measure of 1902 were minor, and really the result of the Consolidation Commission. This Act was designed to check the evil of baby-farming, which in 1892 was assuming considerable dimensions. In the metropolitan centres uncertificated women of disreputable character were following the profession of midwifery, receiving women in large numbers for confinement. There was no legislation regulating the registration of births of the infants. Consequently the births were not registered. The notorious "Makin" case (about 1891) aroused public interest to the fact that baby-farming was apparently being practised to a considerable extent, and with impunity so far as the law was concerned. The features

Children's Protection Act (1892) and (1900).

Makin Case.

of this case showed that this woman was in the habit of adopting children for payment in a lump sum, and soon afterwards destroying them by either starving them to death or using more violent measures. A number of deaths were traced to her, and she suffered the penalty of the law. These disclosures hurried the legislation controlling infants and infant-life, which had already been too long deferred. The Children's Protection Act compelled the registration of custodianship in the case of infants up to 3 years, and provided for the supervision of nursing-homes—*i.e.*, private houses in which more than one infant was taken. It contained regulations for the control of the adoption of infants, and provided heavy penalties for the non-observance of its provisions. But there were—and there still remain—grave weaknesses. The character or competency of midwifery nurses was not questioned in the Act, and many of the same class of women to-day, unqualified and unscrupulous, continue to receive patients for confinement to the detriment and danger of their lives, and frequently the lives of the infants also. The absence of regulations to enforce surgical cleanliness in many of the places classed as lying-in homes is a seriously-felt want. Of course, the administration of this Act, despite its defects, has reduced the number of these women, has enforced the registration of births of infants where previously the registration was not effected, and has protected the health and lives of infants who have been placed out by their mothers with a person, who is called a "custodian" under the Children's Protection Act. The statistics of this State in respect to infantile mortality compare very favourably with those of other States and countries. This I have shown in detail in a newspaper article recently. But a still greater improvement would soon be disclosed in the presence of comprehensive legislation, embracing provisions for the better competency and control of midwives, and establishing in metropolitan and country centres crèches on lines similar to those followed on the Continent. I shall consider this aspect of the work

Children's Protection Act (1892).

Provisions and Defects.

Act has done good.

Where improvement is possible.

more in detail later, when I have come to deal w the question of amendments to the Acts minutely.

owing importe of country ditions in pect to social rk.

There is one point that I do not lose sight of in re to social work in this State, and that is the gradu increasing necessity for stricter control of foster-ho and lying-in homes in the country. Of late years rapid growth of certain districts in the State has gi new phases to old problems. Ignorance, isolation, the absence of established institutions in the cou centres—together with a remoteness from the admi tration—are factors which, in the absence of st legislation and proper supervision, may lead to dan to child-life, and to moral evils greater in inten than are present in the more crowded metropol areas.

ants' Protec- n Act (1902).

The social measure next introduced in this State the Infants' Protection Act (1902)—a partial supplen to the Children's Protection Act. This measure passed by the Carruthers Government in 1902; predominant features are the provisions in regard nursing homes for infants, the age limit being ra from 3 years to 7 years for purposes of supervis the oversight of institutions for the care of child whether such institutions are public or not; and the insistence on material corroboration in respec paternity proceedings concerned with illegitimate spring. This latter provision is practically a revivi a stipulation contained in the Deserted Wives Children's Act of 1840 to the effect that "proo paternity is not to be accepted on the oath of the mo only." In the administration of this Infants' Protec Act the difficulty of corroboration sufficient to sa the Court has led to the dismissal of applications, Act being construed at present in such a way a require a *primâ facie* case being made out to the C by the applicant before a summons will be issued aga the man charged. A provision which I placed in Bill when before Parliament enabled complaint tc made by the Boarding-out Officer on behalf of t applicants after investigation by him of the circ

ential pro- ions.

stances of the case. Such a clause (which, unfortunately, was omitted by Parliament) is really essential to the satisfactory operation of the corroboration provision. Women, frequently, through stupidity or nervousness when questioned in Court, omit important facts in connection with the case—facts which are corroborative—and thereby fail to satisfy the Magistrate. The provision, which I have referred to, foresaw and guarded against that possibility. The Boarding-out Officer, with a knowledge of the facts supplied in the first instance by the applicant and confirmed by inquiry, would be able to present to the Court needful particulars in a reliable form, and, on the other hand, would be able to save the time of the Court by reducing the number of applications of an unreliable nature. The importance of such an insertion in the Act I cannot over-estimate; it is really the only means by which the clause as to the necessity for corroboration can be effectively applied without hardship or injustice to the applicant.

Necessity for provision.

The Neglected Children and Juvenile Offenders Act, which was passed into law by Mr. Carruthers' Government in 1905, is really the most important piece of legislation from a social point of view that has ever been introduced into the State. It represents a policy of dealing with children up to 16 years of age not as criminals in an ordinary Police Court, amid all sorts of degrading surroundings, but as offenders in regard to whom reform may be obtained in certain cases, even without the infliction of punishment. The salient feature of the Act is the Children's Court. The children are brought before the Special Magistrate in private and the latter may (and almost invariaby does) order that all persons not directly interested in the case shall be excluded from the Court-room or place of hearing. So far as it is possible the home-surroundings of the delinquent are inquired into, and, if the information available is not judged to be sufficient to enable the Magistrate to form a definite opinion upon it, the case is remanded pending further investigation by an officer appointed for that purpose. Should the environment

Neglected Children and Juvenile Offenders Act (1905)

Salient feature.

Procedure.

Disposal of Children.

be found to be of such a character as to warrant such a course, the child may be released upon probation, or he may be "committed to the care of some person named" other than a relation; or, finally, if such action appears to be necessary, he may be sent to one of the Institutions, of which the principal are the Farm Home at Mittagong, the Training Ship "Sobraon," and the Carpenterian Reformatory. During the official year ending the 5th April, 1907, 171 boys have been judged to require institution treatment, and 63 have been sent to the Farm Home, Mittagong; 68 have been sent to the "Sobraon," and 40 to the Carpenterian Reformatory. Those cases sent to the Farm Home, generally speaking, represent a lesser criminal or vicious tendency in the children, and it is anticipated that a comparatively short period of detention at the Farm will suffice to check the development towards vice and crime in the majority of the cases. Ordinary boarding-out or probation provisions can then be applied to them successfully. The lads sent to the "Sobraon" and the Carpenterian Reformatory represent a more advanced degree of criminality, and, possibly, a longer period of detention at the Institutions will be needed to ensure reform. But I have dealt more fully with these questions under separate headings later. The more incorrigible offenders are, of course, sent to Industrial Schools or Reformatories. Here discrimination is exercised on a basis of age and degree of criminal proclivity, as shown by the circumstances of the case to the Court. Last year 728 children—683 boys and 45 girls—were dealt with by the Court in Sydney. This represented six months' work from the introduction of the Act in November, 1905, to the close of the official year, April 1906. During the past twelve months (to April 1907) 1,608 cases were dealt with, of whom 136 were girls and 1,472 were boys. This jurisdiction in regard to children shows the great necessity that has existed for legislation to deal with children by special treatment. Before the introduction of the Act in 1905 juvenile offenders were dealt with in the Police Courts—apparently

Nature of Cases.

Cases dealt with.

Previous policy in regard to juvenile offenders.

not to any great extent, though the actual degree of juvenile delinquency cannot be definitely stated. If youthful offenders were not dealt with in the Police Courts, they were not dealt with at all. And in very many cases it may well be that, rather than subject children of tender ages to the exposure and degrading atmosphere of a Police Court, the administration preferred to ignore the delinquencies altogether. The absence of proper legislation and machinery would thus lead to necessary reformative work being ignored at the very time when, if it had been undertaken, the greatest chances of success would have been offered. I think that the large numbers of children who have been brought before the Metropolitan Children's Court since its inception illustrate a reactionary policy. Now that the means have been given in a humane and reasonable way, the children are brought before the Court, although in many instances the offences with which they are charged are comparatively trivial and frequently the outcome of boisterous youth rather than inherent vicious inclination, and strict temperate treatment by the Court probably acts on them as a permanent deterrent. This is indicated by the records of the Court, which show that the same "minor offenders" do not appear repeatedly before the Special Magistrate. This power of the Court to check what may be described as "incipient larrikinism" should largely help to reduce the quantity and degree of crime in children and thus lessen the making of criminals generally.

Effect.

Vice and Crime in Children.

Causes.

Were I asked to state shortly what are the causes of vice and crime in children, I should answer—in the majority of cases they are caused by a defective or an inadequate fulfilment of the parental obligation, by evil environment, and occasionally to a certain, although limited, extent by the mental instability which is the result of hereditary transmission from a nervously diseased or degenerate parent. Vice and crime (as such) are not hereditary, nor, in fact, are any other qualities or habits which may have been acquired by the parent during his lifetime. In this connection I cannot refrain

from quoting the opinion of Sir Crichton Browne, Visitor in Lunacy to the High Court of Judicature in England, who in a recent letter to me on this subject, criticising a small brochure of mine, says:—

Heredity (its bearing).

"I am inclined to take a wider view than you do of the range of heredity; but, of course, the question as to the relative influence of heredity and environment in the making of manhood is one of degree. No environment or training will make a man out of a microcephalic idiot, but there are slight conditions of brain growth and mental defect in which education may do much. I quite agree with you that too much is often made of heredity, and then it is a fatalistic and paralysing hypothesis. The hereditary bias derived from a nervously diseased and demoralised parent is not necessarily towards vice or evil. For instance, children of inebriates are often born of nervous, impulsive temperament, and, if reared in unfavourable circumstances, are not unlikely to lapse into the parental infirmity. But, if they are brought up in a wholesome atmosphere and are carefully educated, their temperamental qualities may evolve in a superior way, making them bright, vivacious, sympathetic, and even imparting to them a dash of genius."

The views which Sir Crichton Browne expresses in his letter have my fullest endorsement. Summed up, they are, in effect, this: that "provided you are not asked to make a man out of a microcephalic idiot," careful education and wholesome surroundings can be applied to the children of a demoralised parent, so that "their temperamental qualities may evolve in a superior way."

Vice in Children

In considering the question of vice in children, I strongly hold to the view that, to a very great degree, the vicious and criminal inclinations of children are objective rather than subjective: they are the influences of a child's surroundings on the child-mind. In the early years of his life, a child imitates what he sees and hears; his actions are largely the reflex of his surroundings. Up to the age of 10 he is psychologically incomplete. His

Nature of child-vice.

A child's mental development: (a) imitative (b) reflective.

faculty of reason has not developed; mentally he relies for guidance upon his natural powers of imitation; morally and spiritually he is what his environment is making him. From the age of 10 or 11, under normal conditions, the child passes mentally from the intermediate, imitative stage to the reflective or reasoning stage. Power of initiative begins to develop and to display itself in his thoughts and actions. Mental growth is rapid rather then gradual (as heretofore), and if it has been fostered and nursed through the imitative stage by healthy moral influences, then we have the makings of a good man; if the early influences have been otherwise, we have the reverse. If early, evil influences persist, the youth—inclined to evil by external things in the first place and not by any inherent vicious principle —will use his increasing reasoning power in the wrong direction. Precocity will take the place of healthy mental development; and habits—under good influences the greatest automatic helps to good conduct—will be formed, which will largely not only handicap the unlucky offspring of bad environment in any subsequent efforts at reform, but also offer a great obstacle to social reformers in their dealings with him. The task of reformers is twofold; they have first of all to "unmake" his character by the destruction of early evil habits, and next to "remake" it by laying a settled foundation for the formation of new habits.

Importance of early influences.

Vice not inherent but the outcome of environment.

Precocity.

Habits or character.

"Unmaking" and "remaking" character.

Thus we can see that child-reform to be effectual must be begun as early as possible. The sooner it is commenced the greater will be the success achieved. And we can see, too, the dangers there would be if the *fact of having done wrong* rather than a growing *tendency to do wrong* were dealt with. If we deal with the tendency to wrong-doing, we have an opportunity of examining and removing or modifying evil influences that are operating on the wrong-doer. If we wait for the fact of wrong-doing, we unduly handicap ourselves in our efforts to reform, and also the wrong-doer. We may wait too long. It is for this reason that legislation on this subject (to be effective) must be liberal in its provisions and

Child-reform must begin early.

Tendencies—not facts—are the starting-point of reform.

Legislation to be effective must be liberal.

capable of liberal interpretation. It must allow of the fullest analysis of environment. It must give the administration unlimited powers in regard to the disposal of children. The *written expression of* such legislation must not defeat the *spirit* of such legislation. Law seeks to deal only with proven facts. Reform begins with the tendencies; and, if the tendencies are to be ignored, so far as the effectiveness of social reform is concerned, the legal expression of the fact might just as well be absent.

Unlimited powers of administration.

"Fact" and "Intention."

When we discuss the question of vice in children we must be very careful to discriminate between offences which are really the result of a criminal intent, and what may be said to be the natural and (if I may be permitted to use the term) "excusable" delinquencies of children; for, however paradoxical it may seem, there is a vast number of offences, which are such only from the point of view of the law, and certainly not from the point of view of the child. In this category we may include truancy, habitual wandering, breaches of regulations and by-laws, and the multitude of offences which are more the result simply of mischief—a misdirection of energy or want of parental control—than of vicious intent. In other words, we must carefully discriminate between offences which are simply breaches of discipline and offences against morality, using that term in its broadest sense.

Vice in children.

Two points of view.

Discrimination needed.

"The natural" in the child.

I am not exaggerating when I say that a criminal career is frequently begun at a very early age, and continued. Professor Marro, of Italy, gives a table of ages at which 507 offenders first began to commit crime. This table shows that 1½ per cent. began to commit crime when under 10 years old; 17 per cent. began between the ages of 11 to 15; 36¼ per cent. began between the ages of 16 to 20; 20 per cent. between the ages of 21 to 25; 7 per cent. between the ages of 26 to 30. The rate continues to decline until it is 2 per cent. at 55 years of age. This table thus shows that between 11 and 15 a large number begin to commit crime, and between 16 and 20 a very much larger number. A separate table shows that the criminal

Criminals begin young.

Marro and youthful criminals.

Criminal tendency highest between 11 and 15 and to 17.

tendency is greater between 15 and 16 and 16 and 17, than between the years 17 to 20.

In the United States of America the criminal tendency is similar. Taking the year 1890 as an illustration, we find that while there was only one-fifth per cent. of youthful criminals under 12 (and no females), the tendency to crime on an age basis increased as follows:—Aged 12 and under 16, 3.1 males and 1.1 per cent. females; 16 years and under 21, 17½ per cent. males and 10¾ per cent. females; 21 years and under 30, 28.4 per cent males and 31.4 per cent. females; 30 years and under 40, 23¾ per cent. males and 28.6 per cent. females; 40 years and under 50, 14.2 per cent. males and 17½ per cent. females. United States similar tendency.

Let us consider the figures of the Metropolitan Children's Court here for the twelve months ending 5th April, 1907, and separate the children, on a basis of age, into two divisions: (1) children up to 12 years, and (2) children 12 to 16 years. Exclusive of 264 children neglected, 1,344 cases were dealt with. Of these .01 per cent. were aged 9 or under. Between 8 and 9 years is the earliest age for the offence "uncontrollable." There were no females before the Court up to that age. The criminal tendency increases slowly up to the age of 12. Approximately 26 per cent. of all the children before the Court for the year were "children up to 12 years." Up to that age less than ½ per cent. were girls. The remainder—approximately 74 per cent. of all cases before the Court, were of children "aged 12 to 16." Only 3½ per cent. (about) between those ages were girls. New South Wales tendency. Age-division. Sex-division. Small proportion of girls.

As to the nature of the offences committed, those against property were the most numerous at all ages. At the earlier ages, the less serious offences were more common. These included climbing in park, bathing in view, travelling without fare, swearing, stealing fruit from Chinamen's gardens, trespass, breach of traffic regulations. The more serious offences were committed between 12 and 14, and 15 to 16. They were comparatively few in number though great in degree: burglary, Offences.

false pretences, more serious forms of stealing or receiving, and embezzlement. On the whole, judging from the decisions of the Court, there is no reason to anticipate other than a most hopeful outlook in dealing with juvenile delinquency. Approximately 25 per cent. of all cases were released on probation or committed to the care of relatives; 33 per cent. were fined; 21 per cent. were discharged, dismissed, or withdrawn; 4 per cent. were ordered to be boarded-out; 16 per cent. were committed to institutions, and of this 16 per cent. approximately 4 per cent. were sent to Mittagong. So that we may say that, in regard to all the cases dealt with, the decisions of the Court indicate that only 4 to 16 per cent. of the children have vicious or criminal tendencies, seriously developed.

Percentage of seriously vicious or criminal cases.

Causes of crime.

As to the causes of crime in children, they may be summed up as truancy and vagrancy, or, in other words—environment. Truancy and vagrancy, again, are very largely the result of parental neglect. I have already dealt with this aspect of the matter in a comprehensive form in a pamphlet entitled "Parental Right and Parental Responsibility" (1905), and I endeavoured to show how degeneracy and vice in parents meant neglect for their offspring, with all the social dangers resulting from neglect. I think, too, I showed that the view of inherent or hereditary vice was not one that appealed to me strongly. I believe that such a view—that is the view of heredity—may be reasonably followed to a limited extent, when, indirectly, it may be found that, from physical causes, certain qualities or tendencies have been transmitted to offspring in certain cases. But I bear always in mind that heredity is an argument with a physical or physiological basis—not a moral one. And if there is a transmission, as the result of physical defects in the parent stock, in the form of mental or moral infirmities to the offspring, then I am strongly of opinion that the tendencies can be removed or greatly modified by suitable environment; and if the tendencies develop, I prefer to seek for the explanation of the development in evil environment rather

Parental neglect or incapacity.

Heredity an argument with a physical—not moral basis.

than in an extreme view of hereditary transmission. Environment to me is the explanation *par excellence* of the good or evil in child-life: supervise the environment and you supervise the development of the child.

Importance of Environment.

Most authoritative views support the argument outlined above. The Rev. H. S. Elliott, at a meeting of the National Association for the Promotion of Social Science (Birmingham, Eng.), shows in regard to the causes of crime generally, that in 1,000 cases drink and bad company are the causes accounting for 50 per cent. Remaining causes are—"Temper," 10 per cent.; and then in decreasing ratio are the causes—Opportunity, want of principle, poverty, immorality, incapacity.

Views supporting this.

Rylands, in "Crime and its Causes," p. 46, gives the causes of crime as "defective training, or the total absence of any; immoral associates, and bad example in prison and out of it; drink; idleness; and the hereditary transmission of evil tendencies. But the only perfectly simple and final division is into two main heads—heredity and environment."

A very interesting instance of the influence of environment on the development of children of vicious parentage is furnished by the records of the Department during the past twelve months, in a certain country district in this State. The influence of the Neglected Children's Act to amend the surroundings is also exemplified. Within an area of some 60 miles different families were living. The district had been the centre of a great gold-rush some forty years ago, and the families referred to represented largely the incapables and degenerates, male and female, left upon the gold-field after the rush had gone. The locality was a remote one, some miles from school or church. The parents' means of livelihood were gold-washing or rabbiting. The parents were lazy, dirty, immoral, and frequently intemperate. They lived with their children in a one-roomed or two-roomed humpy. The sleeping accommodation consisted of one room for the family. Sometimes the room was divided, generally it was not. Children of opposite sexes and advanced years slept in the same room, occasionally

Difference between Vice and Crime.

Degrading influences.

the same bed, as the parents. The parents and children were dull and stupid, and intensely ignorant—conditions resulting from their isolation. The circumstances of these cases, as they were reported to the Court and to the Department, represent a most shocking condition of degradation, and, in regard to that particular class of people living as has been described, the degeneracy was general. As the result of operations under the Neglected Children's Act, 111 children—representing 67 cases—were dealt with in the Children's Courts. Of these 57 were girls and 54 were boys. The charges were—Uncontrollable, 23; neglected—the children living under conditions indicating vice and crime—42; neglected—no proper lodging—35; neglected—exposed by parents—7. In all these cases immoral surroundings of the worst kind were present at the time the cases were heard by the Courts. Yet under pressure, the parents altered the home conditions by building rooms or removing or sending the children to relatives, so that in the disposal of the children we find that only 17 were sent to the institutions; 64 were released on probation or committed to the care of relatives or friends; 13 were boarded-out. Besides this 20 others came under the control of the State Children's Board. The serious part about these cases was that the majority of the children were under 14. In addition to the foregoing, the drastic nature of the action possible under the Neglected Children's Act led to improvement, after the infliction of a caution, in 120 other cases, involving 292 children in adjoining districts. In these latter, the analysis was:—Children uncontrollable, 52; neglected—not provided with proper lodging—157; neglected—living under vicious surroundings,—58; wandering, or exposed by parents, or no proper support, 25.

sposal of ildren.

her cases

The interest of the foregoing is that the criminal tendency had not really developed in many of the cases, but the vicious nature of the environment by reason of the parents' degeneracy was so marked that it was useless to expect the offspring to become decent members of society unless the environment was improved.

Vicious.'

There was no indictable offence charged against any of the children, and in the absence of the provisions of the Neglected Children's Act, no reform would have been possible. Indeed action could not have been taken at all, until some of the children by the committal of some offence, had brought themselves into the category of "criminal." In the same district, prior to the action taken under the Neglected Children's Act, 12 children (all males) had been charged before the Courts with criminal offences, burglary, stealing and larceny. The children charged were members of the same families subsequently dealt with under the Neglected Children's Act. It is obvious, then, that the criminal tendency had been the outcome of the vicious atmosphere in which the children had been brought up.

Punishment of Offences.

I shall now consider the question of the punishment of offences. The question of the punishment of crime generally has always been a disputed one. According to Kant, punishment as applied to crime is an act of retribution. Other views are that its object is the protection of society, and that its real end is the reformation of the offender, or that it is a deterrent. But the view expressed by Morrison ("Crime and its Causes," p. 204 *et seq.*) is the one that appeals to me as the most ethical and the most logical. According to him punishment should be regarded as an expiation and a discipline, in which view we see punishment in its highest form. Punishment is thus not only punitive but it is at the same time "a kind of punishment from which something may be learned." It consists in inflicting pain in such a way as will tend to discipline and reform the character. This view is one of justice tempered with humanity, and makes the punitive and reformative really inseparable.

Different views (a) Retributive (b) Protective. (c) Deterrent.

An expiatory discipline.

Viewed in regard to children.

The importance of this view in reference to children will be obvious, and the latitude allowed to Special Magistrates under the Neglected Children's Act is very necessary. Here there is discretion for punishment to be punitive or reformative, or both. As to what it will be depends upon the liberal mind of the Magistrate and the nature of the case. Treatment must be largely

Importance of liberal-mindedness.

individual, and vary from the mere caution to first transgressors, whose faults are rather those of thoughtlessness than criminal intent, to the strict expiative penalties in the case of advancing criminality; this latter will be lessened as reform is manifested, and the degree to which a child will be reformed or show evidence of reform will depend largely on the administration. And this argument is equally capable of application to the adult criminal. In many instances the punishment is sufficient in the case of a first offender if it be a rebuke in a public Court. On the other hand, experience has proved that habitual criminals will not be deterred by lenient treatment. In Liverpool (England) in the previous decade a system of "light sentences" was introduced. As a result the Chief Constable's report showed that the number of known thieves apprehended for indictable crimes almost doubled in a comparatively short period. Thus, while legislation should lay down provisions that may be applied mildly or drastically according to circumstances, it must (or should) also leave to the Court the power of liberal interpretation.

grees of nishment.

It is little short of remarkable—the transition from the drawing-and-quartering extreme of punishment in the early part of the last century to the First Offender's Act of the present time—a transition from the barbarous to the humane. Transportation replaced by penal servitude, with defined degrees of severity according to the extent of reform or otherwise. Specially modified and softened rules for females, larger gratuities and less strict isolation. Then the British system of local prisons with its central principle of "work in solitude" as against "work in common" in convict prisons. In these local prisons regard is had for comfort and personal requisites, and for educational capabilities. The object is to prevent a man from becoming worse by contact with hardened criminals; "he is permitted to speak to only those whose lives are free from crime." A compromise between the absolute seclusion of the cellular system and that of free association is now effected by

thods of nishment.

a system of classification on a basis of character, nature of offences committed, and conduct in prison. Present stand point.

But after all, the degree of reform is mainly dependent on the effectiveness of the administration. To quote Herr Krone (an eminent German authority)—"successful management of a prison demands special knowledge and ability." Morrison in "Crime and its Causes" (p. 219 *et seq.*), quoting from Krone, outlines his views as to what is needed in the "good prison chief." Training, earnestness, sympathy, are the essential characteristics. Administratio must be effective.

I think I have said enough to show that the trend of modern legislation has been in the direction of humanitarianism, and administration has followed on those lines so far as it could consistently with the interests of society at large. The end in view is mainly the reformative. Let us now see what has been the outcome of this policy so far. Has it tended to lessen the degree of crime—reduce the number of criminals? If it has—and I think we shall find that such is the case—let us persist in it, for by so doing we are not only performing a most important social work on broad, altruistic lines, but we are at the same time adopting the course most economical in the interests of the State. Nothing, we learn from experts, is so expensive as the criminal. It is better to reform a man, if it can be done, than to wreak vengeance on him—the former retributive idea of punishment. It is better to allow him to provide for himself and his family, if it can be done with safety to society, than that the State should do so, for legislation now requires that the man's family also, if need be, shall be maintained by the State. Trend of socia legislation. Humane and reformative. The altruistic and the economic.

It is a difficult and dangerous thing to gauge the extent and degree of crime in a community from criminal statistics. Criminal statistics is an institution of comparatively few years standing. The scientific treatment of crime as it is shown on the gaol and police records is an accompaniment of the wave of universal humanitarianism that has spread over so many communities during recent years. Before the Statistics of crime.

introduction of statistics the growth or otherwise of crime, the effect of punishment on crime, could not be estimated. Morrison points out "Justice worked in the dark—the more offences seemed to increase, the more severe the punishment became, until the criminal law of England reached a pitch of unparalleled barbarity. Laws were on the Statute-book whereby a man might be hanged for stealing property above the value of a shilling." Statistics are still deficient, particularly in regard to the sources of crime. They show the amount and degree of crime, but take little cognisance of the sources. "Crime," it is said, "is not necessarily a disease, but it resembles a disease in this respect, that it will be impossible to wipe it out till an accurate diagnosis has been made of the causes which produce it. Other methods besides punishment must be adopted if society wishes to gain the mastery over the criminal population, and what those methods should be can only be ascertained after the most searching preliminary inquiries into the main factors of crime. Every criminal has a life history, and that history is very frequently the explanation of his sinister career."

Principle of statistics defective.

Again, the action of legislators may go a long way towards swelling the criminal statistics, and the educative spirit—I am using the word "educative" in a broad sense—has influenced modern legislation considerably, so that now an increase in the amount of crime may mean the increase of the moral sense of the community. For instance, before the Elementary Education Act (Eng.) became law the absence of children from school was no offence legally. In 1889 nearly 81,000 persons were tried under the Elementary Education Act in England and Wales. And this argument is true in regard to the development of social legislation generally. Take the Factories Acts and their continually increasing standards of morality and humanitarianism. The Criminal Law Amendment Act of 1885 had a similar bearing, and the outcome of those laws frequently means an increase of criminal statistics. So I think we can agree with the view, that increase of statistical crime does not neces-

Criminal statistics may mean increased moral sense.

sarily mean moral deterioration of the country, but rather proves increased moral sense in the community.

Increase [or] decrease of crime

The question as to whether crime is really increasing or decreasing is one upon which it is very difficult indeed to come to a definite conclusion. There is no doubt whatever that our gaol population has during the last few years very materially decreased, notwithstanding the considerable increase in our general population. But it must not be overlooked that a by no means inconsiderable part of the decrease may be accounted for by the operation of the First Offenders Act, by the tendency of the Courts to inflict fines instead of imprisonment, by the operation of the Alien Restriction Act, by which undesirable people from other countries were excluded from the State; and, finally, by the circumstances that the judges are disposed to inflict shorter sentences than was the custom a few years ago.

Movement of crime.

Looked at from a general standpoint, the question of the movement of crime is a vexed one. In 1890 the principal authorities in Europe and America were of opinion that crime was on the increase. In the United States the view was that crime was increasing faster than the growth of the population. In Germany, according to experts, there had been a deplorable increase "with a dismal outlook for the future." In France M. Henri Joly estimated the increase of crime at 133 per cent. within the last half century; and the view expressed in regard to Victoria, taken as a typical Australasian State, with a special note of commendation as to its methods of taking statistics, was that "though crime did not increase as rapidly as the growth of the population, it was nevertheless a more menacing danger among the Victorian colonists than it is at home." (Stat. Reg. Vic. Pt. 8.) The figures of the Victorian prison population for 1906, are, however, much more satisfactory. The Inspector-General's last report shows that the average has fallen from 1,886 in 1891 to 1,007 in 1906. The daily average had decreased by 27 as compared with the previous year, and the proportion of prisoners to the estimated general population had

Increase.

America.
France.
Germany.
Victoria.
England.

Victoria in 1890

Victoria in 1906

decreased in fifteen years from one prisoner to every 613 to one prisoner to every 1,229 inhabitants. The decrease in the number of females is equally remarkable, the daily average falling from 350 in 1891 to 115 in 1906. The prisoners received into the gaols during the year were 4,923 males and 865 females.

New South Wales.

The condition of our own State is quite as satisfactory as that of Victoria. Captain Neitenstein in his report, dated 28th May, 1907, points to the continued decrease in the prison population. There were 162 fewer prisoners at the end of the year than at the commencement. Comparing the figures of 1894 with those of 1906, there is a decrease of 1,662, notwithstanding an increase in the general population of 279,490—the numbers of prisoners had fallen from 2,604 in 1894 to 1,523 in 1906. The reduction is ascribed to the influence of improved educational methods, and the healthy morals pervading the social life of the community, as well as the advances made in this State in criminology. Captain Neitenstein anticipates a continuance of this most satisfactory condition of things, "not only for the reasons already advanced, but also because of the valuable nature of recent legislation, such as the measures for dealing with Neglected Children, with Habitual Criminals, and the Gaming and Licensing Acts." He further goes on to say that the further development of the steps to lessen truancy will severely check the future growth of crime.

Causes of improvement.

The number of prisoners of all kinds received into the gaols was 12,134—a decrease of 1,246 on the previous year's figures, and of considerably over 8,000 as compared with those received twenty years ago, despite an increase in the general population of over half a million. An important point emphasised by Captain Neitenstein is that "as in former years, the vast majority of those under sentences found themselves in gaol not so much for committing offences as because they did not pay the fines imposed upon them. Of 8,810 summary convictions, 6,853 were received for non-payment of fines—rather more than three out of every four. During the last five years nearly 40,000 persons owed their

Prisoners in not for committing offences, but for non-payment of fines.

imprisonment to this cause. I cannot help thinking that this indicates unnecessary gaoling, and that alternatives might be devised to take the place of so much imprisonment." I mention this in view of the remedies proposed by Captain Neitenstein—release upon probation and extension of "time to pay"—a purely humanitarian policy of checking crime. Remedies.

In regard to female prisoners, the report of the Controller-General of Prisons for 1906 shows that 2,647 were received under sentence—219 fewer than in the year previously. This section of the prison population is described "as unduly swelling the criminal records by coming into gaol over and over again during the same year. Most of them were 'repeaters,' and over half of them were sentenced for terms of one week and under. Their offences were those of drunkenness and immorality, and matters arising therefrom. In view of the present defective method of inflicting repeated short sentences, proper prison treatment was impossible. They had to be allowed to leave, a large proportion of them diseased, a moral and physical danger to the community, with no chance of obtaining respectable employment, but compelled to revert to the only means possible to them to get a living." The remedy proposed is a system of progressive sentences, and power of detention until physically fit for discharge, so that their improved condition may give them reasonable chance of obtaining honest employment. This remedy again is humanitarian and reformative. Females. Proposed remedies.

I do not wish it to be inferred from what I have said that I am underrating the value of punishment as a remedial measure. I am well aware that the really unduly barbarous treatment of criminals in earlier days tends to reaction in the opposite direction, and this may lead to the view being expressed that the value of gaol-treatment as a curative measure is slight. The standpoint which I wish to emphasise is that imprisonment has a definite place as a reformative agency in dealing with criminals, but that place is last; it should not be utilised until other remedies have failed, and it Danger of reaction. Place of imprisonment.

should not be regarded as worthless if, when used under such conditions, it is ineffectual at a first attempt. The view has been expressed that no one is "justified in saying imprisonment is worthless as a reformative agency till it has failed at least three times." The statistics of Great Britain show that imprisonment is effectual after the third time in about 80 per cent. of the cases dealt with. When imprisonment is resorted to after the failure of other methods to check the growth of the criminal tendency in the individual, it should not become mere detention, but must be treatment more or less severe to operate as an effectual deterrent. Two statements of the nature of propositions have been laid down in regard to punishment and crime. These are—"The uncertainty of punishment is the great bulwark of crime, and crime has a marvellous knack of diminishing in proportion as this uncertainty decreases"; and again "In proportion as the probability of being punished is augmented, the severity of punishment can be safely diminished." So that it is to the certainty of punishment (rather than the severity) that we must look if we are to secure a reduction in the amount of crime. When, as in earlier days, the absence of proper machinery such as an organised police force, rendered the chances of detecting crime remote, the punishments, when the criminals were caught, were proportionately severe. This is one explanation of the barbarity of former punishments. As the facilities for catching criminals increased—that is to say, as the probability of punishment was augmented,—the penalties were modified. So that in this view we see the combination of the utilitarian with the humane argument: we have already noticed the economic advantage. Utilitarian, economic, and humane considerations combine to indicate that the trend of future administration in reference to the treatment of crime should be in the direction of making punishment more certain rather than more severe.

Certainty, not severity.

Reverting to the condition of crime in our own State, and to the question of the prison population, I regret to find that I am not able to analyse the position so far as

the committal to gaol of children is concerned. I should like to examine the details of the prison population—particularly in regard to children—in the earlier days of the State—before the passing of the Reform Acts—but the records are not available. In the earlier Statistical Registers of N.S.W., tables are shown, giving details of admissions to prisons on an age-basis "under 10," "10 to 20," and so on. For purposes of analysis and comparison, these tables are useless. The children under 10, of whom there were fortunately very few, are not, and can never be, under ordinary circumstances, regarded as criminals. The next table, "10 to 20" is too general. The criminal tendency cannot really be noticed as such until a child is old enough to be credited with a faculty of personal responsibility. In Germany it is held that a child obtains a sense of criminal responsibility at the age of 12. The degree of criminality increases after that age, and at the age of 20 the offender may be said to be fairly embarked on a career of crime. And the degree of crime or vice may vary so greatly between the ages referred to that a general comparison is impossible. I have treated of this matter already in the present article, and may, perhaps, say a little more on the subject here, in dealing with the number of children confined in gaol. The "Reformatory and Refuge Journal," July, 1890, says "it is an ascertained fact that there is scarcely an habitual criminal in the county who has not been imprisoned as a child." I have already indicated what, to my mind, is the place of gaol in the treatment of crime, and the above statement is an illustration that the employment of gaol-treatment too early has a hardening and a criminalising effect. For the following table shows, from the ages of the children, that intermediate treatment could scarcely have been exhaustively applied. Perhaps the law in regard to the particular offences allowed of no intermediate steps. The figures for the Local Gaols of Great Britain (1888) show .1 per cent. for children under 12; 2.8 per cent. for children 12 to 16; 16.1 per cent. for persons 16 to 21. In a communication addressed to Lord Shaftesbury (1853) Mr. Clay, chap-

Figures re children not available.

Earlier table

Great Britain—Children in gaol.

lain of Preston prison, calculates that dishonesty amongst persons, who afterwards find their way to prisons, begins at a very early age. He shows that 58 per cent. of criminals were dishonest under 15; 14 per cent. between 15 and 16; 8 per cent. between 17 and 19; 20 per cent. after 20. This computation is interesting in view of the figures of the Metropolitan Children's Court here, where stealing is the offence which is most frequently committed. But I consider that too great a degree of *criminal* tendency is imputed to a child who does a dishonest act. Most frequently he does not do it because he is dishonest, but because he is a child, and it is the nature of a child to be non-moral until he is made moral by proper education. So that the very greatest discrimination must be exercised in considering whether a child's conduct is the outcome of non-moral or natural influences; or whether it is the result of precocious mental development in a vitiated moral atmosphere. We learn that "crime is at its lowest level from infancy until the age of 16." It is then that the fact of criminality must be subordinated to that of an analysis of causes—an analysis which will prove that in many cases "the criminal motive" was altogether absent, and that to regard it as being present in point of fact and to punish the offender as though it had been present is simply to hurry him along the road to ruin; and before he has had any opportunity to choose between good and evil, the system of administration gives him what he did not have before—"Criminal Insight."

Early tendencies.

Danger of promiscuous treatment.

The records in this State, as I have before said, do not not allow of a detailed analysis. There is no record of the number of boys and girls in gaol prior to 1897, when in a total of 2,260, there were 5 under 16 years of age. In 1906 there were 4 under 16. There is, of course, no one under 16 in gaol now. The records show that there is a large proportion of women in gaol, and, in view of the extreme social importance of this aspect—perhaps the most important of all—I shall now discuss the question of the proportion of males to females in the

Imprisonment of females.

gaol-population, and of the relative liability of males and females to criminal acts.

Relative liability of males and females to criminal acts.

As a preliminary to this discussion, I may state that the statistics of all nations show that women are less criminally inclined than men, and girls than boys. In Europe, generally, the proportion of male to female offenders is 5 or 6 to 1. Taking the figures for New South Wales for the past years we find that in a total of 1,542 gaol-population for 1877, 1,313 were males and 229 females. In 1887 in a total of 2,382 the males numbered 2,054, and the females 328. In 1897 in a total of 2,260, 2,017 were males and 243 were females. In 1906, in a total of 1,523, 1,361 were males and 162 females. This represents a proportion of 6 to 1 in the years 1877 and 1887, and slightly more than 8 to 1 in 1897 and 1906. Various reasons have been advanced as to why women should commit fewer crimes than men. Generally speaking, the reasons may be summed up in the facts of their environment. Women, to a large extent, lead more secluded lives than men, and for that reason escape many temptations to crime. But while women commit fewer crimes, it has been pointed out by experts that offences by them are more serious in proportion than those committed by men. Guerry and Quetelet (France) have shown that women in France commit more crimes of infanticide, abortion, poisoning, domestic theft, and ill-treatment of children than men. Morrison ("Crime and its Causes") points out that "the proportion of women to men criminals rises with the seriousness of the offence" in England. The proportion of women to men summarily proceeded against is 17 per cent., while it rises to 36 per cent. for more serious offences. English statistics show also that women are more hardened criminals than men, and more subject to reconviction. This fact is also illustrated by the figures of 1906 for our own State, when "2,647 were received under sentence, most of them being repeaters." If we take the figures for N.S.W. for 1905, we find that a total of 61,127 persons were brought before the Magistrates of the State. Of these, 50,621 were males, and 10,506

Proportion in N.S.W.

Quantity of crime.

Qualitative view.

Women commit more serious offences than men.

Women more hardened.

N.S.W., 1906 and 1905.

were females, a proportion of approximately 5 to 1: 38,172 were arrested and 22,955 were before the Courts on summonses. Of the arrests the proportion of males to females was approximately 4 to 1, and of the summonses the proportion was approximately 7 to 1. The convictions of males to females were as 5 to 1 approximately. In the classification of offences—such as drunkenness, riotous conduct, vagrancy, and gambling—the proportion of males to females was $3\frac{3}{4}$ to 1 approximately. In regard to ages, the initial age of criminality of men appears as 6 and of females as 12 years. With males and females alike the greatest propensity to wrong-doing occurs between the ages of 25 and 30 years. In a total of 26,518 cases for the year, approximately, one-sixth were of that age period, and the proportion of males to females was 5 or 6 to 1. The next age in point of intensity of crime is between 30 and 35, the proportion of women to men being 1 to 5, and then between 35 to 40, the proportion of women to men being still 1 to 5. The next age period in point of intensity is 21 to 25, the proportion of women to men being 1 to $4\frac{1}{2}$ approximately.

"Arrests" and "summonses."

Convictions.

Offences.

Ages.

Age-periods and intensity of crime.

Other reasons why women commit less crime than men.

Physical reason.

Morrison, in "Crime and its Causes," gives other reasons why women commit fewer offences against the law than men: among them is a physical cause—women are rarely strong enough to perform offences requiring the exercise of violence, such as burglary or assault. So far as degree of crime is concerned, women seem to be as criminally inclined as men—that is, so far as they are physically able. This is shown in regard to the crime of infanticide, poisoning, abortion, domestic theft—offences which are committed by women more frequently than by men. Again, women are frequently instigators, "though they may not be actually engaged in crime." Statistics show that in many cases of receiving stolen goods women are concerned. Domestic extravagance (as Morrison points out) is the basis of many offences by men of forgery and fraudulent bankruptcy. This moral, if not criminal, guilt of women is likewise strongly marked in many instances in the upbringing of children. Children fre-

Women are often instigators.

quently bring home articles to their parents without being able to sufficiently account for them—articles which they know have been improperly acquired. The mother, rather than the father, is the parent most directly concerned as a rule, for the father's occupation keeps him absent from home through the day. Self-interest, indifference to moral rules, or active criminal tendency on the part of the parent is often the begetting cause of early perversity or criminal inclination in young children, and this influence is found as frequently in the homes of the fairly well-to-do as it is in homes in which its presence is excused on the ground of necessitous circumstances.

Moral guilt of parents in regard to offences of their children.

Influence on children.

Industrial conditions, again, and the stress of competition, by which women are brought into active rivalry with men in the ordinary business of life, are a source of demoralisation. Women come into the industrial arena to the detriment or utter neglect of their social and natural duties—the care and nurture of children. Elsewhere I have spoken, in other pamphlets, of the importance of the "mothering" influence so far as the health and life of young infants is concerned, and the exercise of this "mothering" is as important to the mother for moral reasons as it is to the child for physical reasons. It has been said that "the duties of maternity have kept alive a certain number of unselfish instincts: these instincts have become part and parcel of a woman's natural inheritance, and, as a result of possessing them to a larger extent than man, she is less disposed to crime."

Industrial conditions.

'Mothering.

Captain Vernon Harris, late an Inspector of Prisons in England, in a recent article in the "Nineteenth Century," tells us that the comparative immunity of women from crime is largely due to the fact that "their home-life shields them from many temptations to which men are subject." He also states that the proportion of young mothers in the ranks of criminals is very small indeed—Marriage and Maternity being "undoubtedly the greatest check upon criminality in women." Now, in modern times, many of the women belonging to the lower classes, impelled by the force of

Marriage and maternity as moralising factors in women.

industrial competition, have left the privacy of their homes to find employment—women whom necessity had not previously constrained to go to work; women who, frequently, from the long seclusion of their environment, are not physically or morally fit to take part in the every-day affairs and every-day work of men with men.

Industrialism lowers moral tone of mother

Not only is home-life and the proper care of children sacrificed, but the moral tone of the mother is gradually lowered. A proposition has been enunciated in this connection—"the proportion of female crime in a community is to a very considerable extent determined by the social condition of the women." In Greece, where women are compelled to live very secluded lives, the proportion of female criminals is practically at a minimum. In a prison population of 5,023 in 1890, 50 only were women.

Greece.

This form of the problem—the question of the employment of women and their resulting demoralisation—is difficult of solution. Society, as it is at present constituted, requires the employment of women. Then there is the argument that, if women are forced to work, as large a career as possible should be open to them. I do not propose to deal with this aspect of the matter here, but one thing is quite certain—that the employment of women under present conditions contributes to their demoralisation by the destruction of home-life and home-ties; their earlier seclusion leaves them a prey to many temptations so soon as they emerge into public affairs and as a result they gradually become more criminally inclined. Let me call to your notice a view expressed on this point:—"Crime will never permanently decrease till the material conditions of existence are such that women will not be called upon to fight the battle of life as men are, but will be able to concentrate their influence on the nurture and education of the young, after having themselves been educated mainly with a view to that great end."

Employment of women necessary.

Result.

Reformatories

I shall now consider for a time the place of Reformatories in a Penal Code, and their value as a reformative agency.

If we regard Reformatories as part of a progressive system, they would come last so far as the treatment of children is concerned. The different points in the system, based on a graduated scale of punishment according to the nature of the offence, age, and degree of criminality, are:—1st. Probation—release or committal to the care of persons named, or of relatives; this is less a punishment—except in so far as it may involve separation from parents in certain cases—than it is a course of action based on an analysis of environment, and implying change of environment for reformative reasons. This principle is identical in effect with that of boarding-out. 2nd. There is the Truant School, which deals with wayward children or children who have become wild largely through parental neglect, but who cannot be classed as vicious or criminal; these children are necessarily young. 3rd. There is the Industrial School, dealing with children who have begun to manifest vicious tendencies, and who are standing on the brink of crime. 4th. There is the Reformatory or Reformatory School, for dealing with children who have transgressed the law and become actual offenders. An age-division is scarcely possible in regard to either the Industrial School or the Reformatory. It is implied that children, before they will be sent to a Reformatory, have embarked to some extent on the course of crime, and show fairly strongly-marked propensities to vice. It is at this stage that a grave difficulty of classification is involved. For children, technically eligible for a Reformatory School, in that they have been convicted of an offence, may not for all that be vicious or even criminally inclined. But on this point I have already spoken fully. 5th. There would be the Penal Establishment for youths 16 to 18 or 19—cases in which there is greater hope of reform outside a gaol, but yet requiring detention and discipline. 6th, and lastly. There is Gaol, a form of treatment which, to my mind, is the final resource of those who expect to induce reform in the offender. Cases dealt with in a gaol should necessarily be extreme and bad; for at this

Progressive system of punishment.

1. Probation—release. Commital to care of person or relatives (boarding-out

2. Truant schools

3. Industrial schools.

4. Reformatorie

5. Penal establishment

6. Gaol.

stage the reformer can no longer hope for the offender to retain his self-respect—and with loss of self-respect goes one of the most powerful helps to reform. The offender, with his sense of self-respect gone, may be regarded as being without moral centre of gravity. Once this has been lost, it is very difficult both for the reformer and the offender to find it again.

Reformatories in N.S.W.

As I have already pointed out, the technical distinction between a Reformatory and an Industrial School is not preserved. Children—frequently of advanced criminal tendencies—are sent alike to either. In this State we have no Truant Schools, despite the success that has attended their establishment in other parts of the world, notably in Birmingham, England. And the question of the introduction of Penal Reformatories to deal with the growing youth from 16 to 19 is one that is still unsettled.

No Truant Schools.

The Reformatories and Industrial Schools, established by the Government, in this State number four. The oldest is the "Sobraon," formerly the "Vernon," described as a nautical school ship. This institution was established under the Reformatory Schools Act of 1866. For many years it was the only institution of the kind to which children of more or less criminal tendency could be sent. The numbers in this institution have advanced from 92 in 1877 to 424 in 1905. Analysing these latter figures, we find that of the 424 inmates 82 were under 14, and 342 over 14. The offences were:—Habitually wandering, 237; other offences, 187. During 1905, 106 (under 14), 52 (over 14), and 6 (unknown) were admitted to the institution. The offences were:—Habitually wandering, 75; "no visible means of support," 14; there were also 39 cases of stealing, and the balance were admissions for minor offences; so that the "Sobraon" in 1905 was largely an institution for the admission of vagrant rather than criminally disposed children. As to the ages of the 424 children in the institution in 1905, 40 children were 12 or under, 134 children were aged 12 to 14, 76 children were aged 14 to 15, 67 children were aged 15 to 16, 82 children were aged 16 to 18; the increased ages being due to the

"Sobraon."

Analysis of inmates. 1905.

Ages and Offences.

fact that the original committals had been made for a term of years exceeding the age of 16. So that we can see that in practice the "Sobraon" is an institution for the reception of vagrant and neglected children largely, and secondarily for children committed for "less serious" offences, the ages ranging from 4 to 18 years. Nature of Institution.

Another institution for boys is the Carpenterian Reformatory at Eastwood, established about 1895. Originally it was an adjunct of the State Children's Department, but a few years after its inception, it was transferred to the Public Instruction Department's control and became an institution cognate with the "Sobraon." It was established for the reception of lads of vicious and criminal tendencies, and the cases dealt with there represent a greater degree of juvenile vice than those at the "Sobraon." Taking the figures for 1905, we find of 86 admitted, 40 were under 14 and 46 were over 14 years. The total number of children in the institution in 1905 was 135, of whom 8 were under 12, 26 were under 14, 57 were under 16, 44 were over 16. The offences for which the children were in nearly every case committed may be classed as "serious." Carpenterian Reformatory. Nature of case Ages and offences. Number.

The Industrial School, Parramatta, is of the nature largely of a reformatory for girls. It deals with children of vicious or criminal tendencies, where these tendencies are not so far advanced as to risk the welfare of the other inmates. It is actually a composite Industrial School and Reformatory—for, when really bad girls have to be sent to an institution, the Industrial School receives them and keeps them apart from the division of the inmates who are less viciously disposed. It was established under the Industrial Schools Act of 1866. Since 1877 the figures have not varied very greatly, being 98 in 1877 and 110 in 1906. For a long time it was the only institution that could accommodate criminally or viciously inclined females under the age of 16. A cognate establishment was the Shaftesbury Reformatory, which dealt with comparatively few girls, Industrial School, Parramatta. Nature of Institution. Classification. Shaftesbury Reformatory

but those admitted may be classed on the whole as more refractory and more vicious, and of greater age than those sent to the Industrial School. In 1877, 6 girls were in Shaftesbury; in 1887 there were 26; in 1897 there were 18. The institution was closed in 1903, when 22 girls were there. It has not since been used for reformatory purposes. As regards its control, it was first of all under the administration of the Justice Department, but in the later years of its service it was an adjunct of the State Children's Department, and was very valuable for the treatment of refractory State Children of advancing ages.

Nature of cases.

Control.

Release of children.

I cannot help thinking that many of the children at present confined in Industrial Schools and Reformatories could be liberated. Under careful supervision and changed environment, if necessary, home surroundings should be able to accomplish more quickly and more absolutely reformation in the children. And these home-surroundings can be given so easily, either by release upon probation or committal to relatives or friends—processes which I have already described—or by boarding-out, the accepted policy of the State. I do not wish to underrate the value of such institutions as the "Sobraon." The "Sobraon" is an excellent institution and can accomplish excellent results—if it deals with a particular class of delinquents. But it seems to be that, in later years, it has become the custom of the magistrates to send a class of children to the "Sobraon" with which that institution was never meant to deal. Largely the children are too young, and have not attained to that degree of delinquency which would justify their presence there for a term which frequently becomes a lengthy one of years. The course more in accord with the general policy of the State—more in keeping with reformative method everywhere—would, to my mind, be to admit these children (both because of their tender years and of the lesser degree of delinquency which their offences, if any, indicate) to an institution such as the Farm Home at Mittagong, where classification on a basis of age and

Home surroundings.

Value of "Sobraon."

Suggested alternative.

Farm Home, Mittagong.

degree of degeneracy is easy. In many cases I am convinced that the limit of the term of many of these children would be, at most, one of months—a few months—after which they could be boarded-out or released, under supervision, to friends or relatives, their former environment having been changed. In this view of the matter, too, we see the economic advantage. Many children return to their friends or relatives with comparatively small cost to the State after a few months, instead of becoming a charge upon the Government through a term of years, as is so frequently the case with such institutions as the "Sobraon." The place of the latter, in my opinion, in relation to the reform of juvenile offenders, lies in dealing with youths of advanced ages, whose characters, after careful observation in a classifying institution, have been shown to be beyond any doubt vitiated in an advanced degree and to represent a stage of criminal tendency which would not justify their association with other children. In these cases the strict, isolated, disciplinary training of the "Sobraon" should be beneficial; but, even then, this method should not be allowed to become mechanical by over-long application, but as soon as an appreciable degree of improvement in their character is manifested, they should be at once transferred for reclassification.

Economic view also considered here.

Place of "Sobraon."

Necessity for reclassification.

This view of the work of the "Sobraon" would necessarily limit the number of admissions to that Institution; but, considering it in the light of a Reformatory, the numbers should necessarily be small. In this connection I shall point out two extracts from Morrison bearing on the point: "At one time the value of Reformatory Schools was seriously impaired by herding too many lads together under one roof; it is now seen that the success of these Institutions is marred by making them too large; it is accepted as a general maxim that the smaller the school the better the results." And again, after pointing out that vicious habits in juveniles are acquired by imitation, he goes on to say,—"No public institution, however well conducted, can ever exercise so moralising an effect as a good home." Surely

Numbers in a Reformatory should be small

the proper place of the "Sobraon," as it is at present constituted, is rather one that fits it to perform the duties of a Penal Reformatory in regard to children from 15 onwards—the age period at which, as I have shown, crime attains its highest proportion. It is between the ages of 16 and 20 that there is the greatest scope for reform in a reformatory, as the last alternative before gaol.

Penal Reformatory.

Probationary Farm Home, Mittagong.

Let me now consider the work of the Probationary Farm Home at Mittagong, which was recently gazetted an Institution under the provisions of the Neglected Children's Act. The constitution of this Farm Home is such that it can offer exceptional facilities for the classification or the reclassification of offenders. There are unique opportunities for observing and analysing the characters and tendencies of children sent there. In its nature it partakes of the character of a Truant School in that it can give a child scholastic instruction and at the same time control his waywardness by employing him in one of several occupations, such as carpentering, tailoring, shoemaking, and so on. But more than all it has unlimited opportunities, both from the nature of its location and its acreage, for giving children what, to my mind, is the most powerful curative factor in dealing with Juvenile delinquents—employment at agricultural labour—toil upon the soil. Far removed from the glare and glamour of city life with its thousand-and-one temptations, its nerve-ruining attractions, its evil associations, its unhealthy excitements, its unsettling influences—all tending to a ruinous precocity in the youth all too ready to succumb to them—we place the lads down into the healthy tranquillity of rural life; we employ him partly in scholastic, partly in regular agricultural labour, systematically endeavouring in such wise to eradicate the smartness and cunning and general precocity which town-life so quickly imparts,—which colour the lad's whole actions in after life and render him so easy a prey to sinister influences; and to substitute for it a gradual healthy moral tone, and a habit of *useful and r*eproductive work, which rural surroundings

Facilities for classification.

Nature and advantage

Toil on he soil.

Contrast of town and country life.

under proper supervision alone can give. Apropos of this view I quote from Barwick Baker's "War with Crime"—"Agricultural employment appears to be the kind peculiarly adapted to Institutions whose aim is to unite real advantages to the boy with the absence of all which may appear, even to the ignorant, to make the effects of crime desirable." Contrast, now, this farm-life with its infinite variety, its comparative freedom, its possibilities of reform under discipline without aggressive assertion of the fact, its facilities for observation and analysis of character with a view to classification, with life on the "Sobraon," and its strict disciplinary training on the one hand alternating with the excitements which the lads experience periodically in relation to the nature of their recreations and their appearances in public—its limited possibilities in the way of occupation; its difficulties of classification.

Probationary Farm Home, Dora Creek.

The State Children Relief Board a few years ago originated a Farm Home at Dora Creek, which is still in existence. The Home was placed in the charge of a farmer, who was not a paid officer, but who received a weekly maintenance payment for the lads sent to him, as well as the lads' services. The nature of the cases sent to him was "State Apprentices who, after observation, had displayed marked criminal or vicious tendencies." The number of boys dealt with by this Home annually averages 15 to 20. The treatment is largely individual. The work performed by the lads is agricultural. As soon as there is improvement sufficient to warrant such a course, the boys are found situations locally with farmers (independently of the Department, which, however, keeps an eye upon them). This method has proved distinctly successful, and its success has been due, in my opinion, to the few cases sent there—a course which permitted of individual treatment. I point this out particularly as a practical illustration of what I have just said both in regard to the Farm Home at Mittagong, and the "Sobraon."

Nature of cases

I have gone very fully into the question of Reformatories and Industrial Schools in this State, and I have

taken the "Sobraon" as an instance of the system, because I wish to show that, while Reformatory and Industrial Schools are exceptionally valuable as reformative agencies within certain properly and strictly defined spheres—spheres arranged on a basis of "degree of criminality" after a careful classification (largely individual) has been made—they may become actually a source of danger to the inmates and defeat the object for which they were created if their system is allowed to become a mechanical one, either through the effects of an ill-fitting law or through absence of facilities for proper grading and re-grading of children, in order that they may not be accredited with evil tendencies, which they have not, but may rather be treated with due regard for the good tendencies which their previous evil environment has not yet destroyed.

Girls.

And if careful, individual treatment on a basis of exhaustive classification is needed in regard to boys, how much more necessary is it in the case of girls. From what I have already said and the figures which I have quoted, it will be seen that girls begin to show criminal tendencies at a later age than boys—a fact due to a greater seclusion in early environment as well as to a difference of mental development—and that there are fewer female than male delinquents. But on the other hand, when females do become delinquents, the difficulties of reform are greater. Her past actions exert a sinister influence on her future, and in many cases her first offence may cut her off from the sympathy of her sex. She finds grave difficulties in way of obtaining employment, and gradually arrives at the stage of moral dejectitude and despair, spoken of by Captain Neitenstein, which drives her further along the path of crime. This argument against reformation from the female's point of view does not hold in the case of the male. We have seen, too, that women, when they do become habitual criminals, commit serious offences to a greater degree than men. So that it behoves us to be extra careful at the outset with females, and the most promising standpoint to my mind is that of early

Consequences of evil actions consist in the case of females.

and thorough classification before they reach the reformatory stage of treatment. This course can easily be followed in a manner similar to that which I have suggested should be adopted for boys. Girls could be given work, partly scholastic and partly industrial, so that their dispositions may be carefully observed before they are definitely disposed of; and again, with evidence of reform, should be facilities for prompt reclassification. Suggested course.

I have now reviewed the nature of social legislation in this State and compared it—and its resultant effects—with that of other countries. I have also considered at some length certain principles involved in criminal administration and legislation with their results upon offenders. The more abstract questions of vice and crime in children, and the relative liability of males and females to criminal acts, have been treated in relation to foregoing matter; finally, I have discussed the nature and classification of Reformatories and Industrial Schools and their place in a penal code, with special reference to conditions in New South Wales. I now propose, as a Second Part, to consider the Neglected Children's Act of New South Wales in relation to its possibilities and its short-comings; to show how this and other social measures relating to children may be amended in order that they may the better achieve their purpose; and, lastly, I purpose explaining the nature and constitution of the State Children Relief Board and its claims to be really the only possible effective administrative body in connection with the laws relating to children. Recapitulatory.

PART II.

The Neglected Children and Juvenile Offenders' Act and the State Children Relief Board, its Nature, Duties, and Purpose.

No power of transfer of children committed.

A SERIOUS difficulty, with which the reformer has to contend in his efforts on behalf of delinquent children is that of effective classification—the proper grouping of the children on a basis of age and degree of criminality and vice, and, to a lesser extent, on the nature of offences committed. If the fullest facilities for classification are not provided, then it will not be possible for the most satisfactory results to be obtained so far as the reformation of juvenile offenders is concerned. Procedure will tend to become less thorough and suitable, and administrative efforts will become more and more haphazard. There is nothing so important—so thoroughly indispensable—in dealing with children as classification; and I think that its importance and indispensableness will not be gainsaid by any individual who deals with a social matter in a scientific spirit. Yet, in this State, we find that, before the Neglected Children's Act became law in 1905, there existed no power to remove a child from a reformatory to an industrial school. Three distinct Government Departments—the Chief Secretary's Department, the Department of Public Instruction, and the Justice Department—were concerned in the control of neglected children,—concerned in this important social matter, understand, yet apparently not sufficiently versed in the practical aspect of things social as to realise that the absence of facilities for the transfer of children must seriously militate against the success of any policy adopted in regard to them; for this defect rendered it exceedingly difficult to effectively classify the children who were under control. If a child were com-

Necessity for classification.

mitted to a Reformatory, there he must remain until his sentence were served, no matter how he may have improved in conduct. No power existed under which he could be transferred to an Industrial School, which, theoretically, was supposed to be suitable for the less vicious children; and, in the case of children, who were inmates of an Industrial School and whose transfer to another institution was sought, so much red tape was necessary that the transfer was seldom made. If a child were sent to gaol, there was no power to remove him except by the exercise of the Royal Prerogative, and, on his being released by its exercise, no power existed whereby he could be either placed in any other institution or boarded out. And, generally, the procedure in regard to the committal or transfer of children was so complicated by technical difficulties that the various Acts were ineffectual for all practical purposes. The Neglected Children's Act has largely simplified these matters with its definite provisions in reference to the transfer of children from one institution to another, to an asylum, or to the care of the State Children Relief Board. The Minister for Public Instruction has the power of determination in regard to the above "in respect to any child who has been committed to or is an inmate of any institution." The Act further provides that "a court or judge, in committing a child to an institution, shall do so in general terms, but may recommend to the Minister that the child be sent to an institution of a particular class." Further, "a child on being committed to an institution may, in the discretion of the court or judge, be placed in a shelter, the Minister as soon as practicable to endorse on the order of committal the name of the institution and the place where the child is to be detained." Section 19 of the Act provides that "any child apprehended as a neglected or uncontrollable child or juvenile offender shall be taken to a shelter and there detained pending the determination of a court." Section 35 limits the stay of a child in a shelter to not more than three months, while Regulation 15 provides that "the home of any householder approved by the boarding out officer may be deemed to be a shelter." I mention these aspects of the Act to point out that, while its provisions allow of quick and ready disposal of children, in actual *practice considerable* delay is occasioned, and the

Minister's power of determination (Sec. 35).

Court's power (Sec. 31)

Provisions for ready action.

purpose of the procedure defeated, if matters are allowed to proceed according to an ordinary departmental routine, or if the special magistrates confine themselves strictly in their action to the letter rather than the spirit of the law. The provisions mentioned are exceedingly valuable, and their value can really only be fully appreciated when considered in reference to a *particular* case, just as the exercise of the special magistrate's functions are found to be more effective in proportion as he is willing to deal with the case in a broadly humane and liberal spirit. The extent to which he can do this depends upon himself. The Act, as I shall proceed to show, gives him very great powers, and I do not hesitate to say that, from this standpoint, the degree of success which attends efforts towards the reformation of neglected children and juvenile offenders is largely dependent upon the attitude taken by the Special Magistrate in his interpretation, not only of the legal expression of the law, but also of its object in dealing with children, some of whom—indeed many of them—are just at that age at which legal interference does so much harm or good. So that, whatever view the Special Magistrate may take—whether he is inclined to a literal or to a liberal view of the law—the fact remains notwithstanding, that the responsibility is his, and his alone,—the responsibility of discrimination in connection with the disposal of children,—a responsibility on the exercise of which the ultimate reform of the children largely rests. The Department can intervene in the matter only to see that the decision of the Court is preserved in its integrity; and if the decision has been arrived at as the result of careful analysis of the child's environment, then it follows the lines of departmental policy so far as the State Children Relief Board is concerned; thus the administration of the Children's Court and the general methods of the Department in regard to children become co-operative and inseparable, the Court directing, humanely and benignly, how the work should be done, and the Board supervising and classifying, so that the decision, in letter and spirit, may be preserved in its integrity. Both aspects are essential to the effective performance of this work of social reform, and the degree of reform will be greater or less according to the extent to which these views are realised in practice.

Magistrate's responsibility.

It will be seen from the foregoing that the whole responsibility of determining the character of the Institution to which the child shall be committed rests in the first place with the Special Magistrate, who may act at once on such slender information as to the child's character and environment as is given in evidence by a policeman; or, before determining the treatment for the child, he may remand the case and cause inquiry to be made into the home surroundings by a policeman—an inquiry which in itself is comparatively abortive, because of the natural antagonism of the class mostly concerned to police interference. This is the root-objection to any good resulting in such cases if once the police are associated with the work: for the police as an institution represent the diametrically opposite policy—the detection and supervision of *criminals*; and, naturally, that is the idea deeply rooted in the minds of the particular class amid which the Neglected Children's Act operates: it is the idea that must be dispelled if the reformative and the educative are to be substituted for the punitive—if the new principle, that is to say, of dealing with delinquent children as outlined in the Neglected Children's Act is to supersede the old policy of treating them in gaols and police courts. So it will surely be an obvious, and really in the nature of an absurd anomaly, if a legislative enactment is to provide "Special" Courts as a substitute for Police Courts in dealing with children—"Special" Magistrates instead of Police Magistrates, Special (Probation) Officers, with specific instructions in reference to the moral and material environment of children, and to the lines on which they will conduct their investigations—if, I say, the Legislature is to provide these special appliances so that the purposes of the Act may be achieved, and yet have their particular significance overlooked comparatively at the outset, and the very condition of things set up to which the spirit and intention of the Act alike are opposed. There is, of course, real need for the Special Magistrate to have the assistance of an officer in dealing with the cases that come before him. He cannot be in a position very often to dispose of them at once simply because he has not the necessary information to enable him to do so. But this does not mean that because a police officer happens to bring a child before the Court and

charge him with the committal of some offence, serious or trivial—the records of the Court show that the charges very frequently are of the latter type—that therefore the police officer should continue to deal with the case. As a matter of fact, the disposal of the child rests largely upon what his home-surroundings are found to be, and what the Court is satisfied that they will be in the future: and this essential information can be given to the Court by a probation officer only: there is no longer any legal or implied position for the policeman after he has once brought the child to the Court if the intention of the Act is obeyed; after he has acquainted the probation officer with the main facts of the case, the latter supplies the particular facts in a way that the police officer cannot, for the only duly appointed probation officers are the Inspectors of the State Children Board; special circumstances are given to a special Court in a special manner, the probation officer beginning his inquiries at the point at which, from the very nature of the work, the policeman must cease to act.

Children's Court.

I shall now more fully deal with one of the most salient features of the Act—the Children's Courts, and the powers vested in the Special Magistrates who administer them.

"Special Courts" and "Special Magistrates."

Under Clause IX of the Neglected Children and Juvenile Offenders' Act it is provided that the Governor shall by Proclamation establish Special Courts to be Children's Courts, and that every such Court shall consist of a "Special Magistrate," presumably a gentleman chosen because of his having made a special study of the "educative" in contradistinction to the "punitive" system of dealing with vicious children, and that this gentleman shall have jurisdiction within a proclaimed area. But it is also provided that, in places outside such proclaimed areas—that is, in all the outlying and comparatively sparsely populated districts—the jurisdiction of a Children's Court shall be exercised by a Special Magistrate or by *any two Justices*. The reason for this latter provision is evident: it would certainly not be advisable to place such remarkable powers as are given to the Court in any single Justice of the Peace, who would probably necessarily lack experience in dealing with cases under the new principle which is involved in *the Act*.

The powers of the Special Magistrate, the administering officer of the Court, are practically unlimited. He can release the child on such terms and conditions as he may think fit, commit the child for such period of time as he may think fit to an Asylum or to the care of any person who is willing to undertake such duty and who is approved by him, or he may commit the child to an Institution. Now, under those circumstances, it will be readily conceded that the effectiveness of this measure (and indeed its safety, so far as the general public are concerned) depends entirely upon the view taken by the Magistrate of the intent of the Act. And, in view of the great powers conferred on him in his administration, I deeply regret that the words of the Illinois Law were not introduced into our Act, implying as they do practical instruction to those administering it. After enacting a number of provisions with an intent very similar to our Act, the twenty-first section of the Illinois Law reads thus: "This Act shall be liberally construed, to the end that its purpose may be carried out, to wit: that the care and custody and discipline of a child shall approximate as nearly as may be to that which should be given by its parents, and in all cases where it can properly be done, the child to be placed in an approved family home and become a member of the family by legal adoption or otherwise." From this Clause it will be seen that the Court is practically instructed that it shall not consider itself so much an instrument for meting out punishment as that it shall regard itself as a means for supplying each child with influences that he has probably missed in the past.

Unlimited powers of Special Magistrate.

Illinois Law.

Practical instruction to Court.

Another omission in the Act is that it does not provide for the presence in the Court of a probation officer, whose duty it would be to observe the case, and on receiving instructions from the Special Magistrate, make such inquiries as he might deem necessary concerning the child, his parents, and his environment, and when the child was liberated on probation visit his home (as is provided for by Subsection 2 of Clause 28 of the Act), and report to the Court at such times as he may be instructed. It is true that *some part* of this duty is effectively performed by a police officer, and, in the matter of the prosecution of offenders, the services of the police will always be necessary, but I *strongly hold* that the less the police are in evidence

Probation Office needed at Court.

His functions.

Police action should be minimised.

in the matter the better. The instructions given by the Illinois Court to the probation officers are very much on the following lines:—"When cases are referred for investigation, you will be expected to make a personal inquiry into the facts of the case, with a view to assisting the Court in deciding what ought to be done. . . . The Court will desire to ascertain the character, disposition and tendencies, and school record of the child; also the character of the parents and their capability for governing and supporting the child, together with the character of the home as to comforts, surroundings, inmates, etc. The Court will wish to determine from these inquiries whether the child should be separated from its parents, guardian, or custodian; if so, whether it should be committed to the care and guardianship of some individual or some suitable association or some suitable institution." Now the Inspectors of the State Children's Department constantly have duties to perform which are positively identical with those prescribed by the Illinois Court. They are, therefore, experts in such investigations, and I may say that the Board receives from them, and considers at its meetings, hundreds of such reports, for the homes from which numbers of State children are received are identical in character with those of the majority of the children who are brought before the Court.

orrespondence Board's Inectors' duties ith those outned for Probaon Officers by linois Court.

Other defects of the Act which I shall briefly mention seem to me to arise to some extent owing to the absence of that spirit of liberality of interpretation in regard to its provisions. Presumably, because the law does not state literally that the Act is to be liberally construed—as in the case of the Illinois Law—the Special Magistrates feel constrained to come to their decisions, guided only by the letter of the law. If this at the present time is the legal attitude, then it is an attitude which is at variance with the purpose of reform and the sense of the law. Let me give you an illustration:

ther defects.

A boy will not go to school. His father is at work all day, and the boy will not go to school for his mother unless she herself takes him, when he frequently runs out. The mother herself says she cannot persuade him to attend. His attendance in 6 months is 24 days out of 109. The *Neglected* Children's Act defines an "uncontrollable" child

rtancy and the w.

as "a child whom the parent cannot control," and further, defines "maintenance" as including "clothing, support, *training and education*." The child is charged as "uncontrollable." Yet, in the opinion of the Court, such a child is not in the eyes of the law—as it stands above—an uncontrollable child. It is true that certain country Courts, held under this Neglected Children's Act, have taken a different view, and have regarded such a case as proved, have released the child on probation, and thereby secured a daily school attendance. The truancy has ceased. Observe in this the difference between the literal view—the view which considers that the law cannot deal with a truant—the view which to my mind is not an obvious one in the face of the definitions stated above—the view which stultifies the purpose of the Act: and the liberal view—the view which considers that the law intended to stop truancy and expressed its intention in the above manner—the view which achieves the purpose of the Act and shows the value of the legal, liberal mind in the administration of the law relating to children.

Opinion at variance.

Consider now another defect, and let us illustrate it with a specific instance: Section 29 of the Act states that "if a child who has been released upon probation breaks the terms or conditions of the release, he may be apprehended and brought before the Court"; and "if it shall appear that such breach has occurred, the Court may commit him under this Act in the same manner as if he had not been released upon probation." Section 28, subsection (3), states that "any person having the care of a child as aforesaid, who neglects or illtreats such child, shall be liable to a penalty of five pounds, and the child may be removed from his custody and control by the Minister." This subsection applies when a child has been convicted of being a neglected or uncontrollable child, and has been released upon probation upon such terms and conditions and for such period of time as the Court may think fit: or who has been committed for such period of time as the Court may think fit, either to an Asylum or to the care of some person who is willing to undertake such care: or who has been committed to an Institution." (Section 23, subsections (a), (b), and (c).

Release upon probation; or committal to care of person and punishment for default.

In certain country courts, when a child is released upon probation or committed to the care of a person, a bond as security for the carrying out of the Court's decision is most frequently sought from the parent or guardian, and in addition the terms of the release are based upon the defects shown in the case at the hearing and are *definitely stated in detail* by the Magistrate and *written down* as part of the Court's decision. In the bond we have an additional hold on the parent and guardian in regard to the fulfilment of the conditions of the release, and the detailing of the various points which must be subscribed to by the parent or guardian makes the release a real thing—prevents it becoming a mere formal matter. But other Courts hold that it is sufficient to release a child upon general terms—those of "good behaviour"—without stipulating the particular conditions: that the bond is not of advantage, and that subsection (3) of section 28 does not apply, so far as the parent is concerned, in the matter of punishment if the conditions of the release are not carried out. Thus we see again two views: the one indicating an earnest effort to secure the intention of the Act and using its provisions as its spirit suggests, recognising the responsibility involved and implied; the other view very likely a legal one—certainly a perfunctory one—extending the probation-release privileges in accordance with the law, stating the terms of the release in all instances as "good behaviour" without regard to the special needs of the individual case, leaving the parent frequently in the dark as to the exact nature of the Court's requirements for the future, and the child without sufficient counsel—a view which carries out what the law literally requires but does no more—misses its spirit and weakens its effect. And this latter point is of very real importance, for, very frequently the parents are ignorant and unintelligent, and to these characteristics failure to carry out the Court's demands may be often reasonably attributed in the absence of definite directions.

Another view.

Another matter to which I shall draw attention is the twofold view of the meaning of section 13, subsection (1). That subsection says that "at any hearing or trial by a Court under this Act, the Court *may* order that any person not directly interested in the case shall be excluded *from the* Court Room or place of hearing or trial." Sec-

Exclusion of persons from hearing.

tion 12 further directs that "a Court shall be held where practicable in the vicinity of a shelter"; or "in some building or room approved of in that behalf by the Minister." One view held is that the Officers of the State Children Relief Board shall be excluded unless they are actually witnesses or prosecuting officers: and they have accordingly been excluded, though their presence there as probation officers should have been valuable to the Court and to the Department. This is again the literal, legal view in which the Magistrate uses his discretion to *exclude*—as opposed to the liberal, legal view in which the Magistrate uses his discretion to *include* probation officers—to ascertain from them the precise nature of the case and details as to the different institutions, and supervision of probation, and so on: and uses his discretion also to include Ministers of Religion and obtaining from them assurances that they will assist to supervise the moral training of children, if released. The former view—with the presence of a police officer in the Court, a matter of which I have spoken elsewhere—tends to introduce the Police Court element into the work, really in contravention of the proviso contained in subsection (b) of section 12, and—with the absence of a probation officer, who alone is trained alike in knowledge of children, their general home surroundings, and general knowledge of institutions, and therefore qualified to help the Court—to minimise also the effect of Children's Court efforts in the work of reform. The latter view, whereby Ministers of Religion and probation officers and persons who can assist the Court are allowed to be present, emphasises the fact that a Children's Court is a place in which advice and sympathy are offered in the children's interests, and not an ordinary Court, and asserts also, in the spirit of the Act, that *Children* are there to be *counselled*—not *criminals* to be *punished*.

Two views.

Correct Court view.

Certain definitions, again, are capable of clearer expression, so that the principles involved in them may be the more easily carried into effect. Definition (d) would more readily satisfy the legal mind if the word "neglected" were inserted before "ill-treated" in the first paragraph, so that it would the better correspond with the proviso which forms the second paragraph, where the word "neglect" *occurs before* "*ill*treatment." This difference is due to the

Definitions capable of amendment.

words of this definition being adapted imperfectly from section 9 of the Children's Protection Act of 1902, where the word "neglected" occurs before "illtreated" and "neglect" occurs before "illtreatment." This omission may make a difference to the legal mind in dealing with cases calling for action under that section; it certainly makes no difference in the principle involved. The regrettable part about the matter is that the intention of the Legislature is to be defeated simply because of the omission of a detail legally necessary. Let us then have the omission rectified. Again, definition (j) states that a "neglected" child is one "who is living under such conditions as indicate that the child is lapsing into a career of vice and crime." This to the legal mind is the definition most difficult of all to prove. To the ordinary mind the definition would appear to state not only a most important principle, but to state it clearly. However, before the cases under that heading can be readily dealt with, legal opinion is that the words "is likely to lapse" should follow "is lapsing." Let us then have this amendment, so that again the intention of the law may be realised. The definition, too, is a most important one, and, further, the principle is not amplified or indeed interfered with in any way by the addition of the words referred to.

arental right id obligation.

Objection has been taken to the Neglected Children's Act on the ground that it unduly interferes with the relation between parent and child. This argument I have discussed in previous pamphlets to show that such is not the case. I shall briefly review the ethical foundation on which the principles of the Act rest.

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The purpose of Government, I think, all will admit is to secure the greatest amount of good for the greatest number, to ensure the material, moral, and spiritual welfare of society so far as it can. Now, society is the "State writ large," as the "individual is the State writ small"; and this purpose of the State to secure the greatest good for the greatest number applies with equal force to the securing the greatest good for the individual so far as such a course is compatible with the interests of the greatest number or society. That is to say, the welfare of the individual is

thical basis.

secondary to the well-being of society as a whole, and, if the *individual chooses* to act in such a way as is not consistent

with the moral interests of the community but is at variance with them and is a danger to them, then society in its governing capacity must step in to restrain him in its own interests. Now, the most important feature in the life of society, the most sacred influence on the social life of the individual, is the family group. It is not an exaggeration to say that it is the basic principle of Christian life—this grouping of society into families, each with its distinctive characteristics, yet all of them harmonising with the general well-being. And this family life is—perhaps more than all else—the most powerful moral and spiritual influence on the character of the individual. Destroy this influence by breaking up the family group, and what is the result? The moral ruin of the individual.

Sacred nature of family life.

Importance for the individual.

And perhaps there is no law that was ever drawn that more clearly expresses this view of the importance of family life than the Neglected Children's Act. Notice how the clauses which lay down the conditions on which children may be released upon probation to their parents impose upon the latter the observance of the essential principles of family life—proper training and proper material conditions—the conditions which are present in the average family life—and without which family life is impossible. "Therefore," says the Neglected Children's Act to the parent who is not the average but the degenerate parent—the parent without real sense of parental responsibility—"supply these essential conditions to home-life as the average citizen does, as you, without excuse have failed to do, to the moral danger and detriment of the average citizen and his family, your own family and the State." Supply them—we will give you a chance to do so if you will let us: if you say you cannot we will show you how to improve them; but if you will not, if you mean to persist in a degenerate course, then the State will do it for you, giving your family that which you were able to give them but failed to let them have—the chance to live the life of the average citizen under proper conditions, freed from the fetters of an ever-growing immorality, with which you were shackling them."

The Neglected Children's Act tends to restor and so preserv family life.

Argument of Act.

What is Parental Right? Surely not the right of a degenerate parent to slowly and systematically achieve the *ruin of his family* by imposing upon their helpless lives the

State Right of Interference versus Parental Right

pernicious influence of his vices, shaping them to a career of crime, transforming what should be a blessing to the community into a curse. Shall the State in its wisdom recognise such a claim to Parental Right, which, properly applied, appears as a sacred obligation, a moral heritage bequeathed to parents in the interests of the State? No, I say, a thousand times, no. A degenerate parent has no sense of Parental Right and the State must not pretend that he has. In my pamphlet on "Parental Right and Responsibility" published in 1905, I have carefully discussed the question and shown that Parental Right is, or ought to be, limited by the right of the State to demand that the child shall not, through the culpable neglect of the parent or guardian, become a menace to the well-being of the community. That we are legally justified in separating children from vicious and degenerate parents is a fact established by its embodiment in the laws of England (Act 62 and 63 Victoria, chapter 37). An Act to amend section 1 of the Poor Law Act provides that, "When the child is maintained by the guardians of a Poor Law Union, and the guardians are of opinion that by reason of mental deficiency, or vicious habits or mode of life, the parent of the child is unfit to have control of it, the guardians may at any time resolve, that until the child reaches the age of 18 years, all the rights and powers of such parents shall vest in the guardians, and therefore, those rights and powers shall so vest accordingly." The fact that this power is limited by the antecedent condition that the child is already being maintained by the Board of Guardians does not really affect the principle involved. In France, indeed, the "Loi Roussel" (1889) provides for the removal of children from the control of neglectful or immoral parents. And after all, if the well-being of children is to be considered, how can there be any question as to the equity of the principle in the moral interests of the State—as well as to its necessity in the interests of the children? In our own State we have the opinion of the Hon. Mr. Fosbery, for upwards of thirty years Inspector-General of Police, and it is this: "General neglect of parental control is responsible for a very large portion of the juvenile crime, and it can only be remedied by a stricter administration of *the truancy law*, and some authoritative interference with

Limitation of Parental Right.

Legal justification.

Partly in England. Fully in France.

Le Loi Roussel.

Local opinion.

the uncontrolled habits of vagrancy in the children." Douglas Morrison in "Juvenile Offenders" (p. 143 *et seq.*) expresses the opinion that: "While every precaution should be taken to prevent children from being deserted, and while making the deserter of them amenable to the criminal law, it admits of little doubt that society consults its best interests when deserted children are withdrawn from the control of the parent." In this connection the word "deserted" is synonymous with "neglected." Morrison is pointing out that children should be sent to Industrial Schools rather than to the Union, because the latter frequently hand the children back to the heartless parent after he has been imprisoned for deserting them, though the former demoralised home conditions remain. "These conditions," he says, "are usually idle, drunken, callous habits, or mental unfitness to bear the entire burden of parental responsibilities." Again he says: "With children once deserted, the resumption of parental control means the renewal of parental cruelty and neglect, and initiation into habits of vagabondage and crime." Morrison.

Of course this removal of children from parental control—where the law gives the right of removal—is a power that must be exercised with the utmost caution, after the most careful deliberation. For, degenerate the parents may be, but, when their children are taken by the State because of this degeneracy, then with the children go one of the greatest inducements to reform in the parents. Frequently we find that to remove the children is to remove the strongest (and often, the only) restraining influence that the parents have: to leave the children is sometimes to secure reform in the parents. And this fact again has been taken account of in the Neglected Children's Act, which releases the children on probation if the parents can amend the environment: or, if they cannot, allows them a chance to send their children to relatives or friends, to whose care they are committed. Only as a last resource are children sent to institutions and removed entirely from the parents' influence—when the interests of the children and the community render that course necessary. Very grave care must be exercised in using the power to remove children from parents. Influence on parents. Recognised in Act.

The course to be adopted in reference to children who are viciously or criminally inclined, is, therefore, one of *two: either to modify*, improve or absolutely change the Only two possible courses.

environment, and treat the child apart from an Institution on the one hand: or, on the other hand, if the former alternative cannot be followed immediately, to send the child to an Institution, realising that, if the latter course has to be adopted, it is an extreme one, and, in the absence of regular classification, actually dangerous, but one that it should be necessary to apply in the first instance to comparatively few cases. Now there is a position which I wish to strongly emphasise—that of "compromising" when the child comes before the Court either by the infliction of fines or by admonition from the Magistrate. Such action probably has good effect in dealing with adults, who pay the fines themselves and thus realise the punishment, or, not being habitual offenders against the law, are fitted by their age to profit by a caution, especially when administered in a Police Court by a Police Magistrate. But when such a position is taken up in regard to children, the conditions being altogether changed, it clearly becomes anomalous. It seems to me, in the first place, that the infliction of fines— which of course are paid by the parent— can possess very little value indeed so far as the reformation of the young delinquent is concerned; and, in the second place, a child is frequently not fitted by age to properly benefit by a magisterial admonition: he may again have passed beyond the incipient stage of criminal tendency, at which a caution has fullest effect, and may need to be placed amid different surroundings—a fact that can only become thoroughly known to the Court after special inquiry by officers appointed for that purpose, when it will very frequently be found that reformation will not be possible in the offender unless the environment *is* changed, or, at any rate, unless there is some material alteration of the social conditions under which the offence has originated. The practice of discharging children to their parents without the proviso that a probation officer shall visit the home from time to time and make such inquiries as seem necessary, shows that those administering the law entirely fail to understand the idea which underlies the Children's Court—the idea that it is not the punishment which is expected to prevent a recurrence of the criminal habit, but rather the amelioration of the home conditions, out of which the offence so frequently arises—and, indeed, I

Compromise is dangerous.

Misconception of nature of Act.

think that, in many cases, a material improvement may be expected, not only in the conduct of the child, but, also, as I have already explained fully elsewhere, in the habits of the parent. I do not wish to give the impression that what I have just said is the outcome of any hypercritical spirit. Already the records of the Children's Court show a very large proportion of cases that have been disposed of by the imposition of small fines, and I quite fail to comprehend for reasons I have just given how that course could commend itself as one which has any meaning whatever so far as either punishment of, or hope of reformation in, the offender is concerned. The Children's Court is packed with cases that evidently in the Special Magistrate's opinion are adequately met in the cursory manner which I have described, but in my opinion this is not a realisation of the tenor and provisions of that measure. Unless the circumstances of a case are very exceptional, I hold strongly to the opinion that a juvenile offender, when brought before the Court, and his offence proved, should be dealt with either in one of the several forms (which the Act allows) of release under supervision of probation officers, or by committal to an Institution, with proper recognition of the responsibilities which the latter course, as an extreme one, implies.

In this latter connection I consider that, when it is found necessary to send a child to an Institution of a reformatory nature, there should not be any possibility of doubt either in the minds of the Reformatory authorities or of the children as to what such a committal really means. There should be no doubt, particularly so far as the delinquents are concerned, that for wilful and persistent acts of a criminal nature, they have been sent from their homes as a punishment—a punishment, which, in form and discipline, is as close an approximation to a gaol and gaol-treatment as their ages permit; and that, if improvement is not evidenced in their conduct, gaol alone can be their future portion. A recognition of the punitive and expiative element must be instilled into the children and preserved so long as the circumstances justify that course. They must not feel that it is an alternative to a home life or even to a life in an ordinary Institution: they should not have pursuits or recreations which will tend to minimise the meaning of

their presence in a Reformatory. It should not be necessary, perhaps, for them to be there long, but, while there, they should feel clearly and continually that they are there, serving time for offences committed, and saved from gaol only by their age, which will not serve them as a protection from that similar punishment for long. So soon as a case ceases to be one for Reformatory treatment, classification comes in, the child should be at once removed, and the circumstances from that time become altogether different. I mention this at length in the light of certain views which have been expressed by gentlemen in authority in this State, and illustrate the danger of not realising what committal to a Reformatory implies. For instance one gentleman says: "A "number of boys are more proud of their connection (with "the 'Sobraon') than they were of their connection with "their parents." Another gentleman remarks: "We have "'Sobraon' boys all over the country who are proud that "they have been associated with that Institution." Surely, no matter how worthy lads may have become subsequently as the result of effective Reformatory treatment, any idea of pride in such a connection—any comparison with home-life—is altogether misapplied. It is indeed a gratifying feature that numerous lads have been made good citizens—a fact of which they may well be proud and for which they should be very thankful. Views such as those I have quoted rather indicate to me that children in the past have been sent to the "Sobraon" who should not have gone there at all—an aspect of the matter which I have previously discussed. Further, such opinions suggest to me quite another point in relation to home-life; for, if they are to be taken seriously as replacing home-life under any circumstances and the real nature of a Reformatory hidden, what inducement remains for the many struggling parents to continue to strive to bring up their offspring respectably, to furnish for them, frequently with great hardship, the home-conditions that are essential to moral up-bringing? Such views being propagated seriously, will a certain class of parents not feel disposed to test the truth of them and save themselves the responsibility of the training of their children independently under arduous conditions? But I need not dwell upon this. I do not remember hearing or

reading anywhere an expression of opinion so calculated as the foregoing to undermine parental responsibility and lessen parental control in many cases. What a premium to neglect his natural and moral obligations would be offered to the parent with degenerate tendencies.

I have dealt with the nature and provisions of the Neglected Children and Juvenile Offenders' Act very fully because of its social importance and to explain those portions of it which, to the casual observer, may appear unduly harsh or authoritative, and have sought to show, on the other hand, that its provisions have been drawn with the fullest observance of what parental rights are, and to what extent the legislation of other countries, which are earnestly engaged in the work of social reform, has fixed a limit to them—a limit demanded by present-day social and moral necessities and by the interests of humanity at large.

I shall now discuss the rise and progress of the State Children's Relief Board—the body which administers the Neglected Children's Act in conjunction with the State Children Relief Act, and indeed all legislative enactments in which the condition of dependent and delinquent children has to be approached directly.

State Children Relief Board.

State Children Relief Board.

I have already pointed out that for some years prior to the passing of the State Children Relief Act in 1881, an independent committee of ladies inaugurated the system of boarding out children with private families, and that in 1881, in view of their successful efforts in that direction, the Government adopted that policy, forming many of the members of the private committee into a Board. It is a curious aspect of social work that, while its initiation most frequently depends upon the philanthropic enterprise of private individuals, its development rests ultimately with the State. The private body, as such, disappears, and becomes incorporated with the institutions of the State, receiving definite functions and definite powers. To my mind this transition from private to public administration is a logical one, and one which is inseparable from the development of the work. And I can see, too, a very valid reason why private effort should precede that of the State. For, how is the latter to learn of the condition of

Transition from Private to Public Bodies.

affairs social, how determine the grounds on which to base its legislative rules, if it does not have the practical experience and suggestion of such private bodies to guide it? The efforts of these private bodies are direct; they may be unorganised, but at all events they employ themselves in ameliorating evils, gradually comprehending their nature as experience increases, and acquiring a practical intimacy with social conditions for which no suitable substitute can subsequently be found. And with knowledge and development of work soon the stage is reached when the State—made acquainted with the condition of social affairs through the medium of these private associations—supplements or entirely supersedes their operations. The necessity for increased organisation, for augmented funds, is frequently the reason, but the practical experience of the social worker is still essential if the work is to be carried on successfully and systematically. Thus we can understand the incorporation of a private body of expert social workers into a Government Board, the State availing itself of their practical knowledge and experience, which are essential to successful administration, and giving, in return for the honorary services of these philanthropists, powers of administration, recognised by the Legislature, sufficient to enable them to carry on the work with the fewest possible obstacles. So we see that, while the attitude of the Board so constituted in relation to its work is a practical and direct one, that of the State, after it has performed its legislative duty, is or should be largely indirect. The responsibility of the work being entrusted to the Board, there should, for instance, be no barriers whatever between it and its work. The argument that justifies its existence—directness of contact with its work—should be the ruling one so long as the Board is in existence: and if the argument that warrants its appointment is forgotton, then the efficiency of its work will be impaired. The spontaneous appearance of private organisations to perform important social functions, and the subsequent recognition by Legislature of the peculiar fitness of these independent, practical, philanthropic bodies to control such work are very general facts in the history of social science.

Explanation.

Practical knowledge.

To come to a particular illustration, we can easily understand why the State should have entrusted the

stration of the law relating to children to the State
n Relief Board, all the members of which were origin-
nestly occupied with social work, and we can also
comprehend how the scope of the duties of the
should have increased, for, though legislation in
matters has been provided, no additional adminis-
body has been appointed, and the practical super-
of the added work has fallen to the State Children
Board. I have previously shown how earlier legisla-
actments, intended for the benefit of children—(such
Juvenile Offenders' Summary Punishment Acts
)—fell into disuse really because of the absence
administrative machinery to give its provisions
al application. Similarly, too, in the absence of
ate Children Relief Board, I am convinced that
easures as the Children's Protection Act and the
ted Children's Act would soon cease to be operative.
oard, by its actual knowledge of social conditions, Advantages possessed by State Children's Board.
lengthy experience in administering the law re-
to children, by its regular analysis of the reports
Inspectors, and by its power of direct procedure,
position—a unique position—to give *immediate*
to legislative enactment, and to express authori-
opinions as to the suitableness of present legis-
and the necessity for amendments. This power—
nowledge *is* power"—is not shared in by any other
r Department in the State. The interest of any
ment Department under such circumstances must
rily be indirect. The Department is really not in
ion to express any opinion upon the nature of the
al operations of the Board, for it has no special
dge of social conditions, and, for definite information
gestion, is constrained to rely upon the reports of
ate Children Relief Board. And, again, in the
rious subjects considered in a Ministerial Office,
ne of them is so comprehensive as the administra-
the law relating to children, surely it will be
ed that, in the absence of distinctive machinery at
epartment, and in the presence of a properly-
uted Board, Ministerial action is, or should be,
formal. There is no scope for action in detail, for
no knowledge of conditions. And since there is

scope merely for formal action, it will surely be conceded that Ministerial interposition should be simply formal.

Present scope of the work of the State Children Relief Board.

Let us look now at the scope of social work, with which the State Children Relief Board is at present dealing. Its variety and volume are such that the term "State Children Relief Board" must be construed in its broadest sense. Originally the term "State Children" applied to children boarded-out or apprenticed under the State Children Relief Act, and in this sense it is still understood in the popular mind. On the passing of the Children's Protection Act in 1892, it received the practical (if not, the legal) jurisdiction of that measure, the administrative officer being the Chief Officer, he being at the same time the Boarding-out Officer. Next the Infants' Protection Act extended the Board's legal and practical powers; and lastly, it is the sole *practical* administrative body in connection with the Neglected Children and Juvenile Offenders' Act. Its Inspectors are the probation officers and their work is supervised by the Board at its meetings. No other administration has a working knowledge or interest in the minutiæ of the different branches of social work, the performance of which is essential to carry out the purposes of legislative enactments. For many years, too, up to three months ago, the Board's Officers exercised supervision over the operations of the different local Benevolent Societies throughout the State and also over the extension of outdoor relief to private families. To a very large extent, the material welfare of the children in these families was the subject for major consideration. The supervision of the work of Benevolent Societies had a similar aspect, and was further valuable, for the purposes of the Children's Protection Act, for the light it threw on the condition of the lying-in of women (who were destitute) and the care of infants in country districts. Thus it will be seen, that the State Children Relief Board, in spite of defective legislative powers, has been fully recognised by the State in all the divisions of social work, directly or indirectly affecting the moral or the material welfare of children, whether such children were their wards or not; and to my way of thinking, this full recognition of the Board's *expert* knowledge in such matters was necessary and

Original Meaning.

Scope increases.

Conjoint functions by request.

Supervision of dependent children in every form.

inevitable, both for economic reasons—it obviated the establishment of additional machinery—and for practical reasons—there was no other State-recognised body or Department conversant with the nature of such work.

Advantages gained through State Children Relief Board.

The value of the State Children Relief Board as an administering body is that, so far, it has been enabled to deal without delay, and very fully, with any matter with which it became concerned; and this power of dealing with cases expeditiously is essential to the effective performance of its work. Take, for instance, the case of an infant with an unsuitable custodian, where even a few hours delay might mean loss of life for the child. But, indeed, it is scarcely necessary to enter into detail. It will surely be conceded that all cases of protection of children, all cases of neglect of children, all cases of relief, must be dealt with *at once* if the Board is to fulfil its purpose; and the intervention of any other body, acting according to routine, without any experience of the circumstances of such work, so far from being any help to the Board's purposes will be a distinct hindrance. I shall not say any more on this point. I have indicated the scope of the Board's duties, and have shown its social value. It is not necessary to point out the uniform success which has attended its efforts—a success wholly due to its practical capabilities.

Power of acting expeditiously is essential.

Any intervention dangerous from point of view of effectiveness.

There are two Acts, to which I have referred already, which illustrate my foregoing remarks. These are the Children's Protection Act and the Infants' Protection Act.

Children's Protection Act.

That the complexities in connection with the administration of the legislation relating to children are a very real consideration, is amply testified to by Mr. Justice Heydon in his memo. and certificate to accompany the Children's Protection Bill—the consolidated form of the enactments for 1892 and 1900. His remarks (which I shall quote verbatim) show that very grave difficulties existed, and still exist, in connection with the administration of the Children's Protection Act—difficulties due not so much to the omission of principles as to the insertion of ambiguities in expression and anomalies in the punishments. Mr. Justice Heydon's remarks, made in connection with his *duties as Commissioner* for the Consolidation of Statute

Technical absurdities.

Mr. Justice Heydon's remarks.

Law, are very clearly put: in submitting the Consolidated Form of the Bill to Parliament in 1902, he says:—"The original Acts are two of the worst drawn in the Statute Book. Throughout these Acts there are strange anomalies in the punishments. All the misdemeanours which are created are made punishable with fine, 'with or without imprisonment with hard labour.' 'This makes it impossible to impose imprisonment, except with hard labour.' 'Many of the offenders under the Acts (probably the majority) must necessarily be females, who always get *light* labour. This was evidently overlooked, and the sections have therefore been altered so as to read, 'with or without imprisonment with or without hard labour, or in the case of a female, light labour."

"Clause 15 illustrates the absurdities with which the original Act bristles, some of which, unfortunately, have had to be left."

"*Re* Clause 16, this Section, taken apparently from the Electoral Act, spoke of 'rolls' (of which there are none under this Act), and referred to the provisions of the last preceding section, in which section there were no provisions whatever having any relation to the matter. The best has been done to give the section sense."

"*Re* Clause 22 (2), the tribunal to deal with cases under this clause was evidently intended to be a Court of Petty Sessions as defined by the Act. The operation of No. 71, 1900, may have made a slight variance in this, but the original intention is preserved."

It will thus be seen that the Children's Protection Act, though it has enabled much good to be done, has been seriously handicapped in many respects. There is an absence of certain provisions in this enactment, the insertion of which would have materially added to its effectiveness in carrying out the social work which the Legislature intended, namely, the protection of children — particularly young infants and children up to 3 years—and the restriction of baby-farming. In these respects the Act has been beneficial certainly, but, under other circumstances, it might have done much more. Again the provisions of the Act show some serious omissions which, considering its purpose, interfere with its efficacy. For instance, in so-called Lying-in Homes we find the following defects which present legislation

Defects and omissions.

is powerless to remedy:—Inadequate and unsuitable accommodation provided for women, who come for confinement; absence of skilled assistance at the proper time to the danger and detriment of patient and infant; drugs dangerously used because used by unskilled women without proper supervision; midwifery work largely monopolised by untrained women, though trained women may be available; an absence of surgical cleanliness and proper precautions against infection, resulting in repeated cases of septicæmia; refusal to obey medical directions in cases (admittedly bad ones) in which a doctor has been called in. These defects are present in cases in which the Lying-in Home keepers are admittedly respectable, in which there is no suspicion that the women are abortionists, yet doing their work in ignorance and prejudiced against medical treatment or medical interference for their patients and against trained midwifery nurses; successfully communicating their prejudices to their patients, who are frequently ignorant women—particularly in country districts—contending that experience—though it be the experience begun and continued in ignorance—is all that is necessary, that it enables them to detect, "in time to send for a doctor if need be," any symptoms of serious ailment in their patients—ailments such as puerperal fever,—that it enables them to use necessary drugs without skilled aid; that it is not necessary to have special rooms for confinement purposes, and that there is no need for particular precautions against infection; when such, I ask, is the standpoint of these women, surely, in spite of their honesty of purpose and their plea that they must live "and have done the work for so long," such an unchecked and uncheckable standpoint should be met by law at once, for it is a standpoint that is not only a real danger to the health and lives of patients and infants but it is a source of menace to public health. The provisions of the Private Hospitals Bill which I introduced into Parliament last November, will, if that measure becomes law, to a large extent mitigate this most undesirable state of affairs. The registration of women, subject to training, is provided for, also the licensing of premises, with due regard to size, sanitary arrangements, and purpose. The character and fitness of women are also *taken into consideration*. And this point is an essential

Standpoint of untrained Lying-in Home Keepers.

Private Hospitals Bill.

Nature of provisions.

one. It may well be imagined that when to the dangers that have been enumerated above are added those of the intemperate "gamp" and the suspected abortionist, a condition of things is established which, in the absence of proper legal machinery, is sufficient to defeat the objects of any Children's Act, no matter how well drawn. There is little doubt that, while many of the Lying-in Home keepers are eminently respectable, the abortion carried-out occurs in numerous homes now coming under the Lying-in Home section. At the present time there are 343 Lying-in Homes in the country and 107 in the city and suburbs. In these homes there were 2,408 registrations of confinement in 1906 in terms of the Act. Experience shows that the moral tone of the community is lowest outside the Metropolitan area, and particularly in centres where people seem to be all more or less closely related. In such cases the all-absorbing idea is to conceal the fact of maternity, no matter what wrongdoing is needed to apparently accomplish that end. In these instances it is practically impossible (even in the best conducted homes) to induce the mothers to suckle their offspring. In addition to a number of keepers of Lying-in Homes, regarding whom there is strong suspicion that they are evading the Act, if they are actually doing nothing worse, there are fifteen women on a special list, who are, without a doubt, abortionists. The majority of them have been before the Court, and some of them have been convicted, but the absence of legal provisions, and the want of definiteness in provisions that are expressed, enable them frequently to elude the law. Women, for instance, take in confinement cases at intervals, but not often enough to bring them within the meaning of the law—the stipulated two-months' interval—yet they are in point of fact Lying-in Home keepers. When charged, that is their defence. Or they may plead that, even if they did take two women within two months for confinement, they did so in friendship and not for payment. Thus again they elude the Act. So we can see that, with the present Act, there is practically no supervision over Lying-in Homes, and only a partial control of children born therein. There is no inspection of the house, only of the schedule records, and, in a special order, if sought, the woman must be named. Finally, persons of inexperience, of no experience at all, of the worst

Number of Lying-in Homes, N.S.W.

Registrations, 1906.

Moral tone of community lowest in centres outside the Metropolitan area.

Black list.

Method of evading Act.

Present legal limits.

character, are not debarred from carrying-on "Private Hospitals," or Lying-in Homes when and where and how they please. What permanent security, then, can the administration hope for in securing the objects which the designation of the Act implies—the protection of children? At the best, all that can be expected is to punish an offender when a case is very clear, so clear in fact that the child has ceased to live and to need protection. For (to point out another aspect of this Act) in connection with the registration of children who are placed out apart from their parents, the Act can prevent a woman (called a "custodian" from taking more than one child to care for (for payment), but it cannot prevent her from taking *one* child if the mother chooses to place it there, though the woman may be a most unsuitable guardian. When the Department intervenes, the woman may refuse to part with it. If the child shows no signs of physical neglect, the Department can take no action. All that can be done legally is to wait until the infant has arrived at the stage at which the law will decide, on evidence, that the child's condition does indicate neglect, then the woman may be punished and the child transferred in a weak, debilitated state with little (if any) chance of living. And, in this connection, too, it is interesting to know that, under the Act, the parent cannot be punished. Recourse may be had to a section of the Crimes Act, the law evidently holding that in this matter it is much more important to punish the offender than to prevent the offence. The Attorney-General has held that section 9 of the Children's Protection Act does not apply to the parent, but only to persons who take children to care for apart from the parent. This decision appears to be prompted by a sub-heading, "Adoption of Children," though the wording of the section itself is very general and is obviously intended to apply to "any person," because it says so. Surely this is another of those absurdities with which, in the opinion of Mr. Justice Heydon, the Act bristles. The Neglected Children's Act deals almost exclusively with the question of *children*—it occupies itself only in a very minor degree with the punishment of offenders, whether they are the parents or not. My idea in this matter, as my previous *remarks on "Punishment* of Offenders" will indicate, is

Defect—No registration fitnes of home.

Restricted application of section 9 of the Children's Protection Act.

Bearing of Neglected Children's Act on the punishment of offenders.

that there should be ready facilities for punishing offenders; and in view of the serious nature that all deliberate breaches of Acts for the protection of children must necessarily have, the punishment should be severe. It does not follow from this that there would of necessity be a large number of prosecutions for child-neglect, or breaches of Acts relating to children: the certainty of severe punishment for such offences would in many cases act as a strong deterrent in this matter, just as at the present time the general knowledge of the weakness of the Acts by the class of disreputable custodians and lying-in home keepers contributes to the committal of certain offences with impunity. This condition of affairs is one that should be changed by law at once. Until it *is* altered, in spite of the great (and, indeed, successful) efforts that have been made by the administrative authorities of the Act to protect the lives of young children, no permanent beneficial result in the direction of improving the vital statistics in regard to very young children can be looked for. It is indeed a marvel to me how this important social matter could have been overlooked for so long.

Effect that ready facilities for punishing would have.

Effect that involved procedure exercises.

Remedy necessary.

One other matter to which I shall draw attention concerns the definition of a "still-birth" as it is contained in the Children's Protection Act, where it is defined as "a child born dead after the commencement of the sixth month of pregnancy." There are different views as to what really would be a satisfactory definition of this term, medical men expressing the opinion that it should read, "a child born dead after the expiration of the sixth month of pregnancy," while another view is that it should read, "after the expiration of the seventh month of pregnancy." The point is important. While it is recognised that legal supervision over "still-births" is necessary, the present provisions may be regarded as unnecessary, because they are ineffectual. When the deaths of infants "still-born" occur under suspicious circumstances, Police inquiry or Magisterial inquiry is made—very often without a qualified medical man being called in to assist. An inquiry of that kind is useless and valueless, as the primary object of such is to determine whether the child was born alive, and only a "post-mortem"—in which a doctor's services are essential—can determine the fact. Such

Definition of a "still-birth."

Suggestions.

Present supervision ineffectual.

Inquiries held without a doctor.

an inquiry, too, is very harmful, in that it closes the door to a large extent to further investigation. A case in point came under notice last year. It had been represented that a single girl was about to give birth to a child. The fact was verified by the circumstance that she had visited a town from an outlying country district, had been remarked to be in an advanced stage of pregnancy, and had purchased baby clothing. When inquiry was made as to how the child was progressing, the alleged mother denied that she had had a child or that she had been pregnant. As the matter proceeded, and her story was found to be false, she admitted that she had been "about five months pregnant—it might have been more—that the child had been born dead, and that she had buried it in the river." The matter was placed in the hands of the police, who visited (with the woman) the river where she had stated the infant had been placed. The woman pointed out the spot in which she had buried the baby, but the body could not be found, and because the law in regard to the charge as to "concealment of birth" requires that a body must be found, and because there was no clause in the Children's Protection Act to meet the case, the woman went scot-free. There is little doubt that the child was destroyed. Just consider what an impetus to immorality and concealment of birth is given by the knowledge throughout a district—itself of low moral tone—of such a case, and of the fact that there is no legal provision to demand fullest inquiry or to punish if information is withheld. Again, in a country district, a woman was caught by the police in the act of burning the body of a newly-born infant—her daughter's. A charge of "concealment of birth" was preferred against her, but the case was dismissed because the body was burnt to such an extent that it could not be stated if the "child had been born alive." It is to be hoped that these are exceptional instances, both from the nature of the offences and the fact that there is no law to deal with them. An extension of the term "still-birth" in the Children's Protection Act, and also a general provision as to offences of the kind indicated in relation to young children—as a link between a breach of the "still-birth" clauses and the offence of "concealment of birth"—are very necessary in the moral interests of the State. Special supervision of

Harmful effects.

Instance.

Suggested Remedies

the nature now offered in the Children's Protection Act is of very little value, and could often be dispensed with where medical aid is called in prior to the birth. A doctor's indorsement of that fact on a lying-in home keeper's record should suffice. In cases in which medical aid is not called in prior to the still-birth, and a medical practitioner (if subsequently consulted) is not able to give an indorsement that the conditions were satisfactory, then, in my opinion, a "post-mortem" should be held. This provision should be inserted in the Act. Apart from the uselessness of an inquiry without a doctor into the circumstances of the death of a still-born child, police intervention is apt to become unnecessarily harsh, even when it is in accordance with the procedure at present laid down in the Act. The following case is one in point. A "still-birth" occurred in a lying-in home in the country. The patient was a married woman, who was most anxious that her child should live. Her character and the keeper's were above reproach. While she was plunged in grief and disappointment at the loss of her child, she was worried into the bargain by police inquiries as to the circumstances of the death, the police officer actually taking the medical certificate to the doctor who gave it to ascertain from him "if things were all right." I mention this instance as showing two defects: First, the incompleteness of the provisions of the Act if the circumstances of the case had been other than straightforward; the too-completeness of the Act if the conditions are satisfactory; a complex state of affairs which needs a legal adjustment to ensure effectiveness of action when necessary, on the one hand, if the case is a suspicious one; and, on the other hand, to prevent harshness of action where there is no suspicion attaching to the lying-in home keeper or the mother of the infant. This danger of harshness would be greatly lessened even under present conditions if the Clause in the Act—Regulation 18—were utilised. Discrimination would be comparatively easy if the "District-Registrar forwarded to the Chief Officer under special cover a record of all births and deaths of illegitimate children on a form provided for that purpose" but, unfortunately, this is not done. In the Registrar-General's opinion it cannot *be done, the* provisions of his own Act preventing it.

Danger of harshness.

nstance.

Registrar-General's Records of Illegitimates.

ctor in conflict.

This point is one requiring immediate attention. It is a matter in which one very important intention of the Act is defeated simply because its provision in that respect is in conflict with a provision of the Registrar-General's Act. To my mind it is very necessary that the particulars of the births of illegitimate children should be available for the purposes of the Children's Protection Act on the order of the Chief Officer. It would not only afford a most effective check upon the completeness and accuracy of the information provided for in the 4th Schedules of the Children's Protection Act, but it would further enable a classification of the mothers to be made, so that inquiry might be dispensed with in cases in which it was found that the circumstances were satisfactory. When it is remembered that the great areas and sparse, scattered population of many of the registrars' districts in the country are conditions which prevent any kind of supervision at all over the parents of illegitimate children, and over the children themselves in so far as the registration of births and deaths is concerned, the importance of what I have just referred to, and the necessity of some improvement, will be obvious. It must be borne in mind that many of the people living in the remote areas of this State at the present time are frequently very illiterate, and decidedly below the average in intelligence. They may be living many miles from a registrar's office, and their plea that it is difficult, if not impossible, to register births or deaths is reasonable. Inquiry shows that, in many instances, the registrations are made by post, the information being furnished by letter. As it is especially in these remote localities that vice and depravity frequently exist, and the moral tone is often very low, these difficulties of supervision—at present at most the very occasional patrol of a mounted police constable when there is a suspected case under notice—render the accomplishment of nefarious ends in regard to infant children easy, with comparatively no risk of detection. I am not in any way exaggerating this position. The experience of the Department indicates that in the remotest districts the moral tone is lowest, and that in those same areas the proportion of birth and death registrations is smallest. It is such a condition of affairs that induces me to be so emphatic in my opinion as to the necessity for *applying* the regulation which I have men-

Records very necessary.

Difficulty of ordinary supervision by District Registrars in the country.

Moral tone lowest in remotest districts.

tioned, and which, though it exists in the Children's Protection Act now, exists as a dead-letter because of a legal technicality.

Infants' Protection Act.

Nature of Act.

I shall now briefly refer to the terms of the Infants' Protection Act. The Infants' Protection Act became law in 1902. It is really an extension of the provisions of the Children's Protection Act in so far as the registration of children apart from their parents is concerned. One striking feature of the Act is the provision established for the payment of preliminary expenses in connection with the birth of illegitimate children. Another very important power is the inspection of Institutions for children. This latter power is valuable for the opportunity that it gives to supervise the health and surroundings of very young children placed out apart from their mothers. In my opinion a very appreciable difference will shortly be manifested in the mortality rate of infants—a difference for the better—simply because of the insistence of the rule that if an infant is sent to an institution, the mother must accompany it in order to nourish it. Of course there may be exceptions to this rule, but I am firmly convinced, that the more fully it can be applied, the greater will be the beneficial effect—the larger the number of young, delicate lives that will be saved. Since the introduction of the Infants' Protection Act there has already been a great improvement evidenced in this respect, and I feel sure that it is largely due to insistence upon the mother's accompanying the infant. There is an objection raised that though you may force the mother to enter an Institution with her infant, you cannot compel her to suckle it. As this argument is based on the unnatural supposition that every woman who enters an Institution desires to destroy her infant, I do not think it can be taken seriously or generally. If there are such instances—and there may well be a few—I believe that the proportion is small and can be reduced by close supervision to a minimum. In those cases obviously the child should be taken from the mother, and, if the circumstances warrant it, the parent should realise the risk which she has courted, namely punishment at law. Another objection is that the shame of a young girl is accentuated by her admission to an Institution, and that the utter loss of her self-respect is likely to

Mothers to accompany infants to the Institutions.

Objections to above.

Purely theoretical.

A second objection.

result through association with worthless women, who are in the Institution for the same purpose. This objection is one not so much against the *principle of* admission to an Institution as the *application of* it. This objection can be overruled by a proper and necessary system of classification—a factor dependent upon the administration. In furtherance of the work of this Department in the matter, a home under a qualified nurse in a country district near Sydney has been established for the accommodation of a limited number of women with infants under conditions which obviate such an objection. We may say that under a proper system of classification and administration no reasonable objection can be urged against the practice. So far as sending these girls to large Institutions is concerned, I hold that the smaller the establishment the less the social danger to the mother or infant, and I do not doubt that the trend of administrative effort in this direction is towards what will practically amount to a system of boarding-out these unfortunates, who are of good character, under circumstances which will ensure that privacy will be preserved for the mother's affairs, while the fullest opportunity of rearing the infant will be offered.

nstance.

Trend of admi istrative effort

Another point to which I should like to refer is the question of the mother's ability or otherwise to establish corroboration of her story when she goes to institute proceedings against the father of the infant. The Act at present requires the production "of evidence on oath, either oral or on affidavit, in corroboration in some material particular of any allegation in such complaint as to the paternity of the infant." This stipulation for corroboration is often interpreted by the Magistrates to mean the proving of what is practically a *primâ facie* case before a summons will be issued for the appearance of the man before the Court. It will be readily admitted that there are many cases in which such corroboration is not possible, or, again—this applies more particularly to country districts—the witnesses the woman wants will not attend; they may live too far, or they may have some other reason, and the unfortunate is not in a position to compel their attendance. Again, there is a class of women, stupid and ignorant, yet with feelings of shame, which prevent their recounting the history of their betrayal

Question of corroboration.

Difficulty of women.

to the Court in the manner in which the latter considers necessary. I quite admit the proportion of worthless, immoral women with whom the Act has to deal; but I am convinced that when they desire to proceed against an alleged father, *they* rarely have any difficulty in procuring the confirmation that is needed, and this readiness to offer corroboration is largely to my mind confirmation of their worthlessness, just as inability on the part of other women to offer it is proof very often of a superior moral tone, and for that reason they should be helped. The remedy to my mind is a simple one. Applicants for summonses to issue could bring to the Court evidence as to respectability from one or two reputable neighbours; then, if the Court was satisfied that the man should appear, it could direct to that effect. That is to say, it should be largely a question for the Court's discretion (determined by the merits of each case) as to what extent corroboration should be insisted upon before demanding the man's presence. Considering that the cases at the Court are heard privately, the man has no reason to urge undue publicity in connection with the proceedings. And, where the Court has a guarantee of the woman's good faith in the presentation of a general certificate as to character of the kind just suggested, there is no reason why an affiliation process should not be fully dealt with at one appearance of the parties. One other point should be remedied. In country districts, where a woman has frequently to come a long distance two or three times to interview the Police Magistrate (who alone under the Act has power to deal with the request) before she can succeed in seeing him, a distinct and reasonable grievance from the woman's point of view is disclosed. The Police Magistrate visits certain centres comparatively rarely. In such instances, his power to initiate proceedings should be delegated to the Clerk of Petty Sessions.

Another matter for attention is similar to one already described under the Children's Protection Act: and that is the propriety of allowing women to take even one infant without her previously satisfying the Board's officers that she is a fit person to have charge of a child. The home should be duly inspected before a child is taken—the practice followed under the State Children Relief Act, *which contains* legal provision to that effect. If a mother

Class of women.

Remedy.

Affiliation procedure.

Country cases.

Clerk of Petty Sessions to have power to deal with case.

Custodians to be approved by Board's officers before a child is taken to nurse.

placed her child with a custodian other than one approved of, there should be a punishment. But as I have previously already fully discussed this point I shall not dilate upon it further.

I have now critically analysed the several Acts which operate in connection with the dependent children of the State, and have shown the great necessity which exists for the extension and amendment of their provisions, so that the State Children Relief Board—as the only body fully competent to deal with the various aspects of the work—may be able to carry out completely its important social duties, unhampered by legal technicalities, omissions or involved procedure. These hindrances to the Board's administration, in my opinion, have gradually accumulated through one Act in relation to children being considered by the Legislature without reference to other similar Acts, with which they are, in principle, closely interwoven, and from which in sense, they are inseparable. So that now the only sensible and thorough remedy is the consolidation of the Acts in this State relating to children—the State Children Relief Act, the Children's Protection Act, the Neglected Children's Act, and the Infants' Protection Act—with the extension of their provisions on the lines indicated and with the omission of those inconsistencies which I have pointed out. And these extensions do not really imply any innovation in the matter of legislation relating to children, but merely seek to give expression—full, liberal expression—to the principles already countenanced and adopted by the legislature. For instance, in respect to what constitutes a "child" in point of age, the State Children Relief Act gives jurisdiction over their wards up to the age of 17, while an amendment of the same Act allows the Board to extend its jurisdiction until the child is 19, if necessary. As such extension was meant to apply in the event of the child's disposition disclosing evil tendencies, it is in fact legal recognition of the necessity of supervision up to 19. The principle is thus identical with that expressed in the Neglected Children's Act, in which measure, however, the age is limited to 16. Again that latter Act deals with children of the age of 5 to 16 years, thus necessitating, in the case of infants, reference to the *Children's Protection* Act, in which, though the age is not

How hindrances in the Acts have come about.

Consolidation of Acts relating to children.

Example: Child and age.

formally limited, the provisions cover the period of infancy and extend to 12, 14, or 16 years. The Infants' Protection Act is concerned with children—but in a particular aspect—up to the age of 7 years. Again "Maintenance" is defined in the Neglected Children's Act as including "clothing, support, training, and education"—a fit and comprehensive definition with a technical bearing suited to the purpose of the Act. However, nowhere in the Act is the term applied in that sense and, furthermore, in the introduction to the Act (p. 1) explaining its purpose, the terms "maintenance" and "education" are cognate—"maintenance" there is not inclusive of "education." In the other Acts "maintenance" is not separately defined. Again, Regulation 31 of the Children's Protection Act says that "where any constable or any officer takes any child . . . . or where such child is brought before a Court of Petty Sessions or any Justice of the Peace such Court or Justice may if sufficient evidence be given that . . . . such child is under improper or incompetent guardianship (whether any person be charged or not), order such child to be committed to the control of the State Children Relief Board." To my mind, by the application of this regulation—a most excellent one—to any child up to 16 years of age, or even older—inasmuch as the provisions of the State Children Relief Act consider the age up to 17 and for two years longer, if need be—some grave difficulties, due to the absence of necessary definitions in the Neglected Children's Act, could be surmounted. But there appears to be an ambiguity in the minds of those interpreting the law as to whether Regulation 31—for which, by the way, there is no equivalent in any of the other Acts—can now apply in view of the subsequent passage of the Neglected Children's Act and its provisions relating to children from 5 to 16 years. I do not think it can be contended that the Regulation in question is inconsistent with the Neglected Children's Act. The ambiguity spoken of is apparently intensified by the repeal of certain sections of the Children's Protection Act and "as much of the rest of that Act as is inconsistent with the Neglected Children's Act." I could go on multiplying instances of difficulties, in various forms, with which the State Children Relief Board has to contend, which militate against legislative intentions in those social matters being given effect to, and which indicate

Example: "Maintenance."

Inconsistency.

General provision in C.P. Act re committal. Of any child under improper guardianship to S.C.R. Board.

the urgent need of consolidation of the Acts. But this question of consolidation is not one that I propose to discuss in detail at present. I merely introduce it here and give a few examples, showing the necessity for it, because I feel, as I have said before, that, until this means is taken to unify and harmonise the enactments relating to children, for so long will legal contradictions and inconsistencies interfere with the fulfilment of the intentions of a humane legislature, and with the actual operations and scope of usefulness of the honorary, philanthropic Board, which is entrusted with the administration of the various measures relating to children.

I have considered—rather more fully than at first I intended to—the different means and methods which have from time to time been practised in this State for the benefit of children, and have shown how the trend of administrative and legislative effort has been always towards the amelioration and restoration of their home-life and home conditions by the application of one principle—that of "boarding-out"—under proper moral surroundings; and it is to the successful application of this principle in one of its forms—that of committal to the care of relatives or friends, release upon probation to parents, or boarding out direct to mothers or strangers—that we must look for reform in the future, whether it be the reform of dependent and delinquent children or of adult offenders. And when I speak of "successful administration" in connection with this principle, the full measure of legislative assistance is implied, so that the work may be carried on, without let or hindrance, and the benefits of proper home life—to replace a life, which, previously, perhaps, has been lived under depraved and debasing influences—extended to all those poor little helpless waifs and strays, those off-scourings of a too-compressed social system, whom the law of so many countries for so many centuries has all too readily stigmatised and condemned as criminals or quasi-criminals, who, in fact, for the most part have been the helpless victims of irresistible social forces, with none to counsel or to aid, left to work out their own destiny to the only possible end—vice and crime. But the present century has ushered in a more liberal and humane spirit, teaching that the final purpose of legislative and administrative activity is not so

"Boarding out the main hope of reform for the future.

much the determination of social facts in matters call
for redress as it is the prevention or mitigation of cause
of which the facts are the unhappy culmination—and t
this purpose can best be achieved by supplying pro
home influences and home surroundings where these
absent to those who need them, improving them where t
are degenerate, destroying them where they are deprav
bringing back, that is to say, from the abnormal to
normal, the citizen and his moral and spiritual envir
ment, so that neither he nor his offspring shall continue
exercise an influence fatal to the material, moral, a
spiritual well-being of himself, the community, and
State.

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